THE MADRAS DISTRICT MUNICIPALITIES ACT

(V OF 1920)

(AS AMENDED UP-TO-DATE)

Acc 94086
Cl 5 Dup

PUBLISHED BY
THE MADRAS LAW JOURNAL OFFICE, MADRAS
1960

All rights reserved.] [Price Rs. 9.

THE MADRAS DISTRICT MUNICIPALITIES ACT

CONTENTS.

		Page.
'eface	...	v
'efatory note	..	1 — 4
,ontents of Sections, etc.	..	5 — 12
ections and Notes	..	13—241
chedules I to IX	...	242—273
ppendices I to VI (Amendment Acts, Madras and Andhra)	..	274—279
ppendices VII and VIII (Rules for the Conduct of Elections)	...	279—291
ppendix IX (Rules for Decision of Election Disputes)	..	292—294
ppendices X to XII (Andhra Rules)	...	294—299
ıdex	..	300—305

ceedings, dated 6th August 1935, pp. 213-231 of Volume LXXVII of the Madras Legislative Council Proceedings.]

17. The Madras District Municipalities (Second Amendment) Act, 1936 (Madras Act XVII of 1936).—[For Statement of Objects and Reasons, *see* Part IV of the *Fort St. George Gazette*, dated 11th August 1936, pp. 285-286; for Proceedings in Council, *see* Proceedings, dated 4th September, 1936, pp. 834-839 of Volume LXXXII of the Madras Legislative Council Proceedings.]

18. The Madras District Municipalities (Amendment) Act, 1936 (Madras Act XXIII of 1936).—[For Statement of Objects and Reasons, *see* Part IV of the *Fort St. George Gazette*, dated 26th May, 1936, p. 265; for Proceedings in Council, *see* Proceedings, dated 4th September 1936, pp. 824-833 and 857-860 of the Volume LXXXII of the Madras Legislative Council Proceedings.]

19. The Madras District Municipalities and Local Boards (Amendment) Act, 1936 (Madras Act XXV of 1936).—[For Statement of Objects and Reasons, *see* Part IV of the *Fort St. George Gazette*, dated 11th August 1936, pp. 284-285; for Proceedings in Council, *see* Proceedings, dated 3rd September 1936, pp. 743-760 of Volume LXXXII of the Madras Legislative Council Proceedings.]

20. The Government of India (Adaptation of Indian Laws) Order, 1937.—[*See* Part I of the *Fort St. George Gazette*, dated 20th April 1937, pp. 691-772)]

21. The Madras City Municipal, District Municipalities and Local Boards (Amendment) Act, 1937 (Madras Act XV of 1937).—[For Statement of Objects and Reasons, *see* Part IV of the *Fort St. George Gazette*, Extraordinary, dated 25th September, 1937, p. 3; for Debates in Assembly, *see* Debates, dated 30th September 1937, pp. 1109-1113 of No. 15 of Volume III of the Madras Legislative Assembly Debates; for Debates in Council, *see* Debates, dated 30th September, 1937, pp. 461-462 of No. 10 of Volume II of the Madras Legislative Council Debates.]

22. The Madras City Municipal, District Municipalities and Local Boards (Amendment) Act, 1938 (Madras Act II of 1938),—[For Statement of Objects and Reasons, *see* Part IV of the *Fort St. George Gazette*, Extraordinary, dated 20th January 1938, p. 15; for Debates in Assembly, *see* Debates, dated 1st February, 1938, pp. 655-672 of Volume IV of the Madras Legislative Assembly Debates; for Debates in Council, *see* Debates, dated 2nd February 1938, pp. 263-266 of No. 4 of Volume III of the Madras Legislative Council Debates.]

23. The Madras Traffic Control Act, 1938 (Madras Act V of 1938).—[For Statement of Objects and Reasons, *see* Part IV of the *Fort St. George Gazette*, dated 22nd February 1938, pp. 46-49; for Debates in Assembly, *see* Debates, dated 1st March 1938, pp. 81-88 and 92 of No. 1 of Volume V of the Madras Legislative Assembly Debates and pp. 113-149 and 150-160 of No. 2 of Volume V of the Madras Legislative Assembly Debates, dated 2nd March 1938; for Debates in Council, *see* Debates, dated 9th March 1938, pp. 476-493 and 496-506 of No. 9 of Volume III of the Madras Legislative Council Debates.]

24. The Madras Repealing and Amending Act, 1938 (Madras Act XIII of 1938).—[For Statement of Objects and Reasons, *see* Part IV of the *Fort St. George Gazette*, dated 9th August 1938, pp. 147-150, for Debates in Assembly, *see* Debates, dated 16th August 1938, pp. 124-125 of No. 2 of Volume VII of the Madras Legislative Assembly Debates; for Debates in Council, *see* Debates, 18th August 1938, p. 89 of No. 3 of Volume IV of the Madras Legislative Council Debates.]

25. The Madras District Municipalities and Local Boards (Amentment) Act, 1938 (Madras Act XVIII of 1938).—[For Statement of Objects and Reasons, *see* Part IV of the *Fort St. George Gazette*, dated 22nd November, 1938, pp. 217-218; for Debates in Assembly, *see Debates*, dated 20th November, 1938, pp. 232-234 of No. 2 of Volume VIII of the Madras Legislative Assembly Debates; for Debates in Council, *see* Debates, dated 12th December, 1938, pp. 59-68 of No. 1 of Volume V of the Madras Legislative Council Debates.]

26. The Madras District Municipalities and Local Boards (Amendment) Act, 1939 (Madras Act XI of 1939)—For Statement of Objects and Reasons, *see* Part IV of the *Fort St. George Gazette*, dated 31st January, 1939, pages 16-17; for Debates in Assembly, *see* Debates, dated 20th February, 1939, 3rd April, 1939, 17th May, 1939, of the Madras Legislative Assembly Debates; for Debates in Council, *see* Debates, dated 11th May, 1939, pages 36-56 of the Madras Legislative Council Debates.]

27. The Madras City Municipal, District Municipalities and Local Boards (Amendment) Act, 1939 (Madras Act XXI of 1939).—For Statement of Objects and Reasons,, *see* Part IV of the *Fort St. George Gazette,* dated 25th July, 1939, pages 295-296; for Debates in Assembly, *see* debates, dated 5th August, 1939 and 9th August, 1939, of the Madras Legislative Assembly Debates; for debates in Council, *see* debates, dated 9th August, 1939, at page 129 of—No. 3 of No. 3 of Volume IX of the Madras Legislative Council Debates.]

28. The Madras City Municipal, District Municipalities and Local Boards Act (Amendment) Act, 1940 (Madras Act XIII of 1940).—[Repealed by the Madras Re-enacting and Repealing Act (No. 1) Act, 1948 (Madras Act VII of 1948).

29. The Madras District Municipalities and Local Boards (Amendment) Act, 1940 (Madras Act XIV of 1940).—For Statement of Object and Reasons, *see* Part IV-A of the *Fort St. George Gazette,* dated 21st May, 1940, pages 46-47.]

30. The Madras City Municipal, District Municipalities (Amendment) Act, 1941 (Madras Act VIII of 1941.)

31. The Madras District Municipalities (Amendment) Act, 1941 (Madras Act X of 1941).

32. The Madras District Municipalities and Local Boards (Amendment) Act, 1941 (Madras Act XII of 1941).

33. The Madras City Municipal, District Municipalities and Local Boards (Amendment) Act, 1941 (Madras Act XVII of 1941)—[Repealed by the Madras Re-enacting and Repealing Act (VII of 1948)].

34. The Madras District Municipalities (Amendment) Act 1942 (Madras Act I of 1942).

35. The Madras City Municipal, District Municipalities and Local Boards (Amendment) Act, 1942 (Madras Act VI of 1942).—[Repealed by the Madras Re-enacting and Repealing (No. 1) Act, 1948 (Madras Act VII of 1948)].

36. The Madras District Municipalities (Second Amendment) Act, 1942 (Madras Act VII of 1942).—[For Statement of Objects and Reasons, *see* Part IV-A of the *Fort St. George Gazette,* dated 27th January, 1942, page 2.]

37. The Madras District Municipalities and Local Boards (Amendment) Act, 1942 (Madras Act XII of 1942).

38. The Madras District Municipalities and Local Boards (Second Amendment) Act, 1942 (Madras Act XVIII of 1942).—[For Statement of Objects and Reasons, *see* Part IV-A of the *Fort St. George Gazette,* dated 17th March, 1942, page 24.]

39. The Madras City Municipal, District Municipalities and Local Boards (Second Amendment) Act, 1942 (Madras Act XXIV of 1942).—[Permanently re-enacted with specified modifications by the Madras Re-enacting (No. III) Act, 1948 (Madras Act IX of 1948).

40. The Madras City Municipal and District Municipalities (Amendment) Act, 1942 (Madras Act XXVII of 1942).—[For Statement of Objects and Reasons, *see* Part IV-A of the *Fort St. George Gazette,* dated 19th May, 1942, page 34.]

41. The Madras City Municipal and District Municipalities (Second Amendment) Act, 1942 (Madras Act XXXVI of 1942).

42. The Madras District Municipalities (Third Amendment) Act, 1942 (Madras Act XXXVIII of 1942).

43. The Madras District Municipalities (Amendment) Act, 1943 (Madras Act VI of 1943)—[Lapsed, *see* Madras Lapsed Act (Removal of Doubts) Act, 1948 (Madras Act V of 1948).

44. The Madras District Municipalities and Local Boards (Amendment) Act, 1944 (Madras Act III of 1944).—[Lapsed, *see* Madras Act V of 1948, *ibid.*]

THE FOLLOWING ARE SUBSEQUENT AMENDING ACTS:

Madras Acts III of 1944; VIII of 1944; XVIII of 1944; XIX of 1944; XX of 1945; XXIII of 1945; I of 1946 (Lapsed); VI of 1946; VII of 1946; XVI of 1946; II of 1947; XXIV of 1947; X of 1949; Adaptation of Laws Order, 1950; Madras Act XXIII of 1950; XIV of 1951; XXIV of 1951; Madras Adaptation of Laws Order, 1954; Madras Acts, XX of 1955; XXXI of 1955; XXXVI of 1955; Madras Adaptation of Laws Order, 1957; Act XXV of 1957; Act XXV of 1958; Madras Act XIX of 1959.

CONTENTS.

PREAMBLE.

PART I.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Title and extent.
2. Repeal of enactments.
3. Definitions.

PART II.

ESTABLISHMENT, CONSTITUTION AND GOVERNMENT OF DISTRICT MUNICIPALITIES.

CHAPTER II.

CREATION AND ABOLITION OF MUNICIPALITIES.

4. Creation of municipalities.

4-A. Townships.

5. Abolition of municipalities.

CHAPTER III.

CONSTITUTION OF MUNICIPAL AUTHORITIES.

Authorities.

6. The municipal authorities and their incorporation.

7. Constitution of Council.

8. Term of councillors and filling up of seats.

9. Procedure when no councillor is elected.

10. [*Omitted.*]

11. [*Omitted.*]

12. The chairman and vice-chairman of the municipality.

12-A. Procedure when no chairman or vice-chairman is elected.

12-B. Chairman, vice-Chairman or councillor not to receive remuneration.

12-C. The commissioner of the municipality.

FUNCTIONS OF THE SEVERAL AUTHORITIES.

The chairman and the executive authority.

13. Functions of the chairman.

SECTIONS.

13-A. Functions of the executive authority.

13-B. Rights of chairman where a commissioner has been appointed.

14. The chairman to be member of every committee of the council.

15. Emergency powers of executive authority.

16. Power of executive officer to incur petty contingent expenditure.

17. [*Omitted.*]

18. Delegation and devolution of functions of chairman.

18-A. Rights and duties of the commissioner.

The Council.

19. Functions of the council.

20. Duties and powers of individual councillors.

21. Council's power to call for records.

22. Obligation of the executive authority to carry out council's resolutions.

23. Appointment of committees.

24. Appointment of special committees.

25. Rules and regulations for proceedings of councils.

26. Appointment of joint committee.

27. Notification of election.

28. Presidency of council.

29. [*Omitted.*]

30. Councillor when to abstain from taking part in discussion and voting.

31. Power of chairman, vice-chairman or councillor to resign.

32. Acts of municipal council, etc., not to be invalidated by informality, etc.

Administration report.

33. Annual administration report.

Controlling authorities.

34. Power of State Government and collector for purposes of control.

SECTIONS.

35. Collector's powers to enforce execution of resolutions.
36. Power to suspend or cancel resolutions, etc., under Act.
37. Emergency powers of collector.
38. State Government's power to appoint officers to supervise municipalities.
38-A. Control over municipal electrical undertakings.
39. State Government's power to undertake works for, or to take action in default of, a municipality.
40. State Government to remove chairman or vice-chairman.
40-A. Motion of no-confidence in chairman or vice-chairman.
41. State Government's power to dissolve or supersede council.
42. Powers of officers acting for, or in default of, municipal council, and liability of municipal fund.

CHAPTER IV.

ELECTION AND APPOINTMENT OF COUNCILLORS.

Elections.

43. Election of municipal councillors.
44. Qualifications for inclusion in electoral roll for municipality and publication thereof.
45. Power to correct electoral roll.
46. [*Omitted.*]
47. Disqualifications of voters.

Qualifications for membership of Council.

48. Qualification of candidates.
49. Disqualification of candidates.
50. Disqualification of councillors.
51. Decision on questions of disqualification of councillors by District Judge.

Election offences.

52. [*Omitted.*]
53. [*Omitted.*]
54. [*Omitted.*]
55. [*Omitted.*]
56. Infringement of secrecy of election
57. [*Omitted.*]
58. [*Omitted.*]
59. [*Omitted.*]
60. Disqualification of persons convicted of election offences.

CHAPTER V.

POWERS OF MUNICIPAL AUTHORITIES IN RESPECT OF PROPERTY, CONTRACTS, ESTABLISHMENTS.

Property.

61. Vesting of public streets and appurtenances in the municipal council.
61-A. Duty of Municipal council in respect of public streets withdrawn from its control.
62. Collected sewage, etc., to belong to municipal council.

SECTIONS.

63. Power of Board of Revenue to transfer control of endowments to municipal council.
64. Inventory of municipal property.
65. Limitation of power to accept property in trust.
66. Objects not provided for by this Act.
67. Procedure for acquisition of immovable property under the Land Acquisition Act, 1894.

Contracts.

68. Delegation of authority to contract and contractual powers of persons appointed by Government.
69. Mode of executing contracts.

Establishment.

70. Establishment of municipal council.
71. The secretary, the health officer and the engineer.
72. Filling up of the appointment of health officer, engineer or electrical engineer.
73. Filling up of appointments other than those specified in Ss. 12-G and 72.
74. Power of council to frame service regulations.
75. Power to punish municipal officers or servants.
76. Power to grant leave to establishment.
76-A. Power of State Government to appoint health officer or electrical engineer.
77. Special provisions regarding Government servants lent to council.
77-A. Provincialization of any class of municipal officers or servants.
77-B. Management of certain Municipal colleges and appointment of staff, etc., thereto.

PART III.

CHAPTER VI.

TAXATION AND FINANCE.

78. Enumeration of ordinary taxes and powers of control of State Government.
79. Special taxation.
80. Notification of new taxes.
80-A. Saving for certain provisions of the Constitution.

The property tax.

81. Description and classes of property tax.
81-A. Levy of property tax on a direction by Government.
82. Method of assessment of property.
83. General exemptions.
84. Taxation to be uniform.
85. Property tax a first charge on property.
86. Property tax when payable.
87. Vacancy remission.
88. Obligation of transferor and transferee to give notice of transfer.

SECTIONS.

89. Owner's obligation to give notice of construction, re-construction, or demolition of building.
90. Remission of tax in areas included or excluded in the middle of half-year.
91. Power of executive authority to call for information and to enter upon premises.
92. [*Omitted.*]

Profession tax.

93. Profession tax.
94. Liability of members of firms, associations and joint Hindu families to profession tax.
94-A. Liability of servants or agents to profession tax.
95. Service of notice on failure of payment of tax.
95-A. Statements, returns, etc., to be confidential.
96. Requisition on owner or occupier to furnish list of persons liable to tax.
97. Requisition on employers or their representatives to furnish list.

Tax on carriages and animals.

98. General provisions regarding tax on carriages and animals.
99. Liability to tax according to period for which carriage or animal has been kept.
100. Exemptions.
101. Composition.
102. Forms to be sent to and returned by tax-payers.
103. Grant of licence on payment of tax.
104. Power to require numbers to be affixed to bicycles, etc.

Tax on carts.

105. General provisions regarding cart-tax.
106. Power to remit tax.

Taxes leviable under sections 98 *and* 105.

106-A. Prepayment of municipal tax condition precedent to registration under Madras Act V of 1911.

Powers to seize carriages and carts not bearing numbers.

107. Seizure of vehicles not bearing numbers.

Tax on servants.

108. General provision regarding servants tax.
109. Power to call for lists of servants.
110. [*Omitted.*]
111. [*Omitted.*]
112. [*Omitted.*]
113. [*Omitted.*]
114. [*Omitted.*]

Surcharge on the income-tax.

115. [*Omitted.*]

SECTIONS.

Pilgrim tax.

116. Levy of pilgrim tax.
116-A. Method of assessment of duty on transfers of property.
116-B. Provisions applicable on the introduction of transfer duty.
116-C. Power to make rules regarding assessment and collection of transfer duty.

General provisions regarding taxation and finance.

117. Power to exempt from taxes.
118. Power to write off irrecoverable taxes, etc.
119. Definition of municipal fund.
120. Budget estimate.
121. Revised or supplemental budget.
122. Appointment of auditors of accounts.
123. Contributions to expenditure by other local authorities.
124. Application of Schedule IV.
124-A. Recovery of loans and advances made by the State Government.

PART IV.

Public Health—Safety and Convenience.

CHAPTER VII.

WATER-SUPPLY, LIGHTING AND DRAINAGE.

Water supply—Vesting of works and powers of municipal authorities.

125. Vesting of works in municipal councils.
126. Construction and maintenance of water-works.
127. Trespass on premises connected with water-supply.
128. Prohibition of building over water mains.

Supply for domestic use.

129. Council to provide water for domestic use.
130. Control over house-connexions.
131. Private water-supply for consumption and domestic use and powers of executive authority to enforce provision of water-supply.

Private water-supply for non-domestic purposes.

132. Power of executive authority to supply water for non-domestic purposes.

Payment for water.

132-A. Power of Council to make byelaws for water-supply.

Supply beyond limits of municipality.

133. Supply without the municipality.

Cutting off water-supply.

134. Power to cut off water-supply.
135. Non-liability of council for reduction or stoppage of supply in certain cases

SECTIONS.

Lighting.

136. Provision for lighting public streets.

Public drainage.

137. Maintenance of system of drainage by council.

Private drainage.

138. Control over house-drains, private and cess-pools.
139. Connexion of house-drains with public drains.
140. Executive authority may close or limit the use of existing private drains.
141. Power of executive authority to drain premises in combination.
142. Building, etc., not to be erected without permission over drains.
143. Construction of culverts or drain-coverings by owner or accupier.
144. Maintenance of troughs and pipes for catching water.

Public latrines.

145. Provision of public latrines and urinals.

Private latrines.

146. Provision of latrines by owner or occupier.
147. Provision of latrines for labourers.
148. Provision of latrines for markets, cart-stands, cattle sheds, choultry, etc.
149. Latrines to be screened from view and kept clean.

General powers.

150. Power to carry wire, pipes, drains, etc., through private property subject to causing as little inconvenience as possible and paying for direct damages.
151. Prohibition against making connexion with mains without permission.
152. Powers in respect of works outside the municipality.

CHAPTER VIII

SCAVENGING.

153. Municipality to arrange for the removal of rubbish and filth.
154. [*Omitted.*]
155. [*Omitted.*]
156. Contributions from persons having control over places of pilgrimage, etc.
157. Prohibition of improper disposal of carcasses, rubbish and filth.
158. Prohibition against keeping filth on premises too long, etc.
159. Prohibition against allowing outflow of filth.
160. Prohibition against using any cart without cover in the removal of filth, etc.
161. Prohibition against throwing rubbish or filth into drains.

SECTIONS.

CHAPTER IX.

STREETS.

Public streets.

162. Maintenance and repair of streets.
163. Powers of municipal authorities.
164. Power to dispose of permanently closed streets.
165. Acquisition of land and buildings for improvement of streets.
166. Power to prescribe building line and street alignment.
167. Buildings not to be constructed within street alignment or building line.
168. Setting back projecting building or walls.
169. Setting buildings forward to improve line of street.
170. Projected streets.
171. Watering of streets.
172. Temporary closure of streets.
173. Protection of appurtenances and materials of streets.
174. Power of municipality to recover expenses caused by extraordinary traffic.
174-A. [*Omitted.*]

Private streets.

175. Owner's obligation to make a street when disposing of land as building sites.
176. Making of new private streets.
177. Alteration or demolition of street made in breach of section 176.
178. Power of executive authority to order work to be carried out or to carry it out himself in default.
179. Right of owners to require street to be declared public.

Encroachment on streets.

180. Prohibition against obstruction in or over streets.
180-A. Public streets open to all.
181. Prohibition and regulation of doors, ground-floor windows and bars opening outwards.
182. Removal of encroachments.
183. Power to allow certain projections and erections.
184. Precautions during repair of streets.
185. Prohibition against removal of bars and lights.
186. Prohibition against making holes and causing obstruction.
187. Licence for work on buildings likely to cause obstruction.
188. Clearing of debris of fallen houses, etc., by occupiers.

Naming of streets.

189. Naming of public streets.

Numbers of buildings.

190. Numbering of buildings.

SECTIONS.

CHAPTER X.

BUILDING REGULATIONS.

General powers.

191. Building rules.
192. Building-site and construction or reconstruction of buildings.
193. Power of council to regulate future construction of certain classes of buildings in particular streets or localities.
194. Buildings at corner of streets.
195. Prohibition against use of inflammable materials for buildings without permission.
196. Prohibition against constructing doors, ground floor windows and bars so as to open outwards.

Buildings other than huts.

197. Application to construct or reconstruct building.
198. Necessity for prior approval of site.
199. Prohibition against commencement of work without permission.
200. Period within which executive authority is to signify approval or disapproval.
201. Period within which executive authority is to grant or refuse to grant permission to execute work.
202. Reference to council if executive authority delays grant or refusal of approval or permission.
203. Grounds on which approval of site for, or licence to construct or reconstruct building, may be refused.
204. Lapse of permission.
205. Power of executive authority to require alteration of work.
206. Stoppage of work endangering human life.

Wells.

207. Application of certain sections to wells.

Huts.

208. Application to construct or reconstruct huts.
209. Prohibition against commencement of work without permission.
210. Period within which executive authority is to grant or refuse to grant permission to execute the work.
211. Reference to council if executive authority delays passing orders.
212. Grounds on which permission to construct or reconstruct hut may be refused.
213. Lapse of permission.

External walls, alterations and additions.

214. Maintenance of external walls in repair.
215. Application of provisions to alterations and additions.

SECTIONS.

Powers of the executive authority.

216. Demolition or alteration of building work unlawfully commenced, carried on or completed.

Exemptions.

217. Exemptions.

CHAPTER XI.

NUISANCES.

Dangerous structures, trees and places.

218. Precautions in case of dangerous structures.
219. Precautions in case of dangerous trees.
220. Precautions in case of dangerous tanks, wells, holes, etc.
221. Power to stop dangerous quarrying.
222. Precautions against fire.

Control over waters, etc.

223. Prohibition of construction of wells, tanks, etc., without the permission of the executive authority.
224. Filling in of pools, etc., which are a nuisance.
225. Regulation or prohibition of certain kinds of cultivation.
226. Cleansing of insanitary private tank or well used for drinking.
227. Duty of council in respect of public well or receptacle of stagnant water.
227-A. Public wells, etc., open to all.
228. Prohibition against or regulation of washing animals or clothes or fishing or drinking in public water-courses, tanks, etc.
229. Provision of public wash-houses.
230. Prohibition against washing by washermen at unauthorised places.
231. Prohibition against defiling water of tanks, etc., whether public or private.

Control over abandoned lands, un-trimmed hedges, etc.

232. Untenanted buildings or lands.
233. Removal of filth or noxious vegetation.
234. Fencing of buildings or lands and pruning of hedges and trees.

Control over insanitary buildings.

235. Lime-washing and cleansing of buildings.
236. Further powers with reference to insanitary buildings.
237. Buildings unfit for human habitation.
238. Abatement of overcrowing in dwelling-house or dwelling place.

Control over certain animals.

239. Prohibition against feeding certain animals on filth.
240. Prohibition against keeping animal so as to be a nuisance or dangerous.

SECTIONS.

241. Power to destroy stray pigs and dogs.

General.

242. Power of executive authority to use or sell materials of dangerous structure taken down, etc., and procedure when there is no owner or occupier.
243. Limitation of compensation.

CHAPTER XII.

Licences and fees.

General exemption.

244. Government and market committees not to obtain licences or permissions.

Keeping of animals.

245. Licences for places in which animals are kept.
246. General powers of control over stables, cattle-sheds and cow-houses.
247. Power to direct discontinuance of use of buildings as stable, cattle-shed or cow-house.
248. [*Omitted.*]

Industries and Factories.

249. Purposes for which places may not be used without licence.
250. Application to be made for construction, establishment or installation of factory, workshop or workplace in which steam or other power is to be employed.
251. Council may issue directions for abatement of nuisance caused by steam or other power.
252. Power of the State Government to pass orders or give directions to municipal councils.
253. The executive authority may enter any factory, workshop or workplace.

Slaughtering.

254. Provision of municipal slaughter-houses.
255. Licence for slaughter-houses.
256. Slaughter of animals during festivals and ceremonies.
257. Slaughter of animals for sale as food.

The milk trade.

258. Regulation of milk trade.

Markets, butchers, fishmongers, hawkers.

259. Public markets.
260. Powers in respect of public markets.
261. Control of the executive authority over public markets.
262. Licence for private market.
262-A. Fee for licence.
263. Sale in unlicenced private markets.
264. Powers of council in respect of private markets.
265. Suspension or refusal of licence in default.

SECTIONS.

266. Prohibition against nuisances in private markets.
267. Power to close private markets.
267-A. Acquisition of rights of private persons to hold private markets.
268. Duty of expelling lepers, etc., from markets and power to expel disturbers.
269. Butcher's, fishmonger's and poulterer's licence.
270. Power to prohibit or regulate sale of articles in public streets.
270-A. Decision of disputes as to whether places are markets.

Cart stands.

270-B. Provision of public cart-stands, etc.
270-C. Prohibition of use of public place or sides of public street as cart-stand, etc.
270-D. Recovery of cart-stand fees, etc.
270-E. Licence for private cart-stand.

Inspection of places for sale, etc.

271. Duty of executive authority to inspect.
272. Powers of executive authority for purposes of inspection.
273. Preventing inspection by executive authority.
274. Power of executive authority to seize diseased animal, noxious food, etc.
275. Removing or interfering with article seized.
276. Power to destroy article seized.
277. Production of articles, etc., seized before magistrate and powers of magistrate to deal with them.

Disposal of the dead.

278. Registration or closing of ownerless places for disposal of dead.
279. Licensing of places for disposal of the dead.
280. Provision of burial and burning grounds and crematoria within or without municipality.
281. Register of registered, licensed and provided places and prohibition of use of other places.
282. Report of burials and burnings.
283. Prohibition against use of burial and burning grounds dangerous to health or overcrowded with graves.
284. Prohibitions in respect of corpses.
285. Grave-diggers' licence.

CHAPTER XIII.

VITAL STATISTICS AND THE PREVENTION OF DISEASE.

Vital statistics.

286. Compulsory registration of vital statistics.

Dangerous diseases.

287. Definition of 'dangerous disease'.
288. Obligation of medical practitioner or owner or occupier of house to report dangerous disease.

SECTIONS.

289. Power of entry into suspected places.
290. Disinfection of buildings and articles.
291. Provision of places for disinfection and power to destroy infected articles.
292. Prohibition against transfer of infected articles.
293. Power of council to prohibit use of water likely to spread infection.
294. Executive authority may order removal of patients to hospital.
295. Prohibition against infected person carrying on occupation.
296. Prohibition against diseased person entering public conveyance.
297. Letting of infected buildings.
298. Power to order closure of places of public entertainment.
299. Minor suffering from dangerous disease not to attend school.

Smallpox.

300. Compulsory vaccination.
301. Obligation to give information of smallpox.
302. Prohibition of inoculation for smallpox.

PART V.

SUBSIDIARY LEGISLATION AND PENALTIES.

CHAPTER XIV.

RULES, BY-LAWS AND REGULATIONS.

Rules and schedules.

303. Power of State Government to make rules.
304. Making of rules after previous publication.
305. Power of State Government to alter schedules.
305-A. Procedure for the making of rules under sub-section (2) of section 77-A and section 305.

By-laws.

306. Power of council to make by-laws.
307. Power to give retrospective effect to certain by-laws.
308. Penalty for breaches of by-laws.
309. Conditions precedent to making of by-laws.
310. Confirmation of by-laws by State Government.

Publication of rules, by-laws and regulations.

311. Copies of Act, rules and by-laws to be sold at municipal office.
312. Publication of regulations.

CHAPTER XV.

PENALTIES.

313. General provisions regarding penalties specified in the schedule.

SECTIONS.

314. Penalty for acting as councillor, chairman or vice-chairman when disqualified.
315. Penalty for acquisition by municipal officer of interest in contract or work.
316. Penalty for omission to take out licence for vehicle or animal.
317. Penalty for unlawful building.
318. (1) Notice to scavengers before discharge.
(2) Penalty for withdrawal of scavengers without notice.
(3) Application of sub-sections (1) and (2) to other municipal servants.
319. Wrongful restraint of executive authority and his delegatee.
320. Penalty for not giving or giving false information.

PART VI.

CHAPTER XVI.

PROCEDURE AND MISCELLANEOUS.

Licences and permissions.

321. General provisions regarding licences and permissions.

Appeals.

322. Appeals from executive authority to council.
323. Limitation of time for appeal.

Power to summon.

324. Power of persons conducting election and other enquiries.
325. Summons to attend and give evidence or produce documents.

Notices, etc.

326. Form of notices and permissions.
327. Signature on documents.
328. Publication of notifications.
329. Publication of by-laws, notices, orders, etc.
330. Notice of prohibitions or setting apart of places.
331. Method of serving documents.

Relation of occupier to owner.

332. Recovery by occupier of sum leviable from owner.
333. Obstruction of owner by occupier.
334. Execution of work by occupier in default of owner.

Powers of entry and inspection of the executive authority.

335. Power of entry to inspect, survey or execute the work.
336. Power of entry on lands adjacent to works.
337. Inspection and stamping of weights and measures.

SECTIONS.

Power to enforce licensing provisions, orders, etc.

338. Consequences of failure to obtain licences, etc., or of breach of the same.
339. Time for complying with order and power to enforce in default.
340. Recovery of expenses from persons liable and limitation of liability of occupier.
341. Relief to agent and to trustees.
342. Power of executive authority to agree to receive payment of expenses in instalments.

Payment of compensation, etc., by and to the municipality.

343. Power of municipality to pay compensation.
344. Recovery of sum due as taxes.
345. Limitation for recovery of dues.
346. Procedure in dealing with surplus sale-proceeds.
347. Persons empowered to prosecute.
348. Imprisonment in default of payment and application of fines.
349. Payment of compensation for damage to municipal property.

Legal proceedings.

350. Institution of suits against municipal authorities, officers and servants.
351. Provisions respecting institution, etc., of civil and criminal actions and obtaining of legal advice.
351-A. Power of election authority to defend himself, if sued.
351-B. Injunctions not to be granted in election proceedings.
352. Indemnity to the Government, Collector, revenue divisional officer and municipal authorities, officers and agents.
353. Liability of chairman, members and executive authority for loss, waste or misapplication.
353-A. Sanction for prosecution of chairman, councillor, or executive authority.
354. Assessments, etc., not to be impeached.

Police.

355. Duties of police-officers.
356. Power of police officers to arrest persons.

SECTIONS.

357. Exercise of powers of police officer by municipal servants.

Miscellaneous.

358. Application of term 'public servant' to municipal officers, agents and sub-agents.
359. Prohibition against obstruction of municipal authorities, servants and contractors.
360. Prohibition against removal of mark.
361. Prohibition against removal or obliteration of notice.
362. Prohibition against unauthorised dealings with public place or materials.

State Government's power of delegation.

363. Delegation of powers by the State Government.

Transitional and transitory provisions.

364. Passing of property and rights to municipality as reconstituted.
365. Commencement of Act.
366. Continuance in office of present chairman and councillors.
367. Procedure for recovery of arrears of taxes, etc.
368. Special provisions in the case of newly constituted and reconstituted municipal councils.
369. Adjudication of disputes between local authorities.
370. References to chairman, in other enactments, and notifications, etc., issued thereunder.

SCHEDULES.

Schedule I.—Enactments repealed.
Schedule II.—List of hill stations.
Schedule III.—Rules regarding proceedings of the council.
Schedule IV.—Taxation and Finance rules.
Schedule V.—Purposes for which premises may not be used without a licence under section 249.
Schedule VI.—List of dangerous diseases.
Schedule VII.—Ordinary penalties.
Schedule VIII.—Penalties for continuing breaches.
Schedule IX.—List of municipalities for which commissioners shall be appointed.

THE MADRAS DISTRICT MUNICIPALITIES ACT (V OF 1920).[1]

(As Modified up to the 1st March, 1960.)

[29th June, 1920.

An Act to consolidate and amend the law relating to District Municipalities.

Preamble.

Whereas it is expedient to consolidate and amend the law relating to district municipalities in the Presidency of Madras and whereas the previous sanction of the Governor-General has been obtained under section 79 of the Government of India Act, 1915 to the passing of this Act; It is hereby enacted as follow:—

PART I.

CHAPTER I.

Preliminary.

Title and extent.

1. (1) This Act may be called The Madras District Municipalities Act, 1920.

[2][(2) It extends to the whole of the Presidency of Madras, except the City of Madras.]

---

1. For Statement of Objects and Reasons, see *Fort St. George Gazette Extraordinary,* dated 3rd November, 1919, pages 168-170; for Report of Select Committee, see *Fort St. George Gazette,* 1920, Part IV, dated 10th February, 1920, pages 87-97; for Proceedings in Council, see *ibid.,* 1919, Part IV, dated 23rd December, 1919, pages 1370-1378; *ibid.,* 1920, Part IV, dated 6th January, 1920, pages 2-11; *ibid.,* 1920, Part IV, dated 11th May, 1920, pages 491-526; *ibid.,* 1920, dated 18th May, 1920. pages 528-606; *ibid.,* 1920, Part IV, dated 1st June, 1920, pages 608-652; and *ibid.,* 1920, Part IV, dated 8th June, 1920, pages 654-690.

This Act was extended to the merged State of Pudukottai by section 301, and the First Schedule to, The Madras Merged States (Laws) Act, 1949, (Madras Act XXXV of 1949).

2. This sub-section was substituted for the original sub-section by section 3 of the Madras District Municipalities (Amendment) Act, 1930. (Madras Act X of 1930),

---

SEC. 1.—When the legislature has vested a street in a municipal council, such vesting does not transfer to the municipal authority the right of the owner in the site or soil over which the street exists. It does not own the soil over which the street exists. It does not own the soil from the centre of the earth; it has the exclusive right to manage and control the surface of the soil and so much of the soil below and of the space above the surface as is necessary to enable it to adequately maintain the street as a street and it has also a certain property in the soil of the street which would enable it as owner to bring a possessory action against trespassers. 25 M. 635=12 M.L.J. 37 [R, 14 M.L.J. 37=27 M. 86 (F.B.); 10 C.L.J. 613=2 I.C. 512; 6 A.L.J. 539=5 M. L. T. 391.] Per *Spencer, J.*—When a new liability is imposed by newly enacted provisions of law it has the effect of annulling all contracts made prior to the enactment. 39 M. L. J. 58=11 L.W. 574=57 I.C. 718. *See also* 28 M. 520.

The powers of a statutory corporation must be strictly construed, and what is not permitted to such a body must be taken as forbidden. Therefore, the fact that a municipal council is expressly granted the power to farm out tolls does not imply that it can also farm out the collection of slaughtering fees. 36 M. 113=21 M.L.J. 700=11 I.C. 669 (11 I.C. 665, Followed; 26 M. 156; 24 M. 401, Referred to). Construction of expression in a bye-law to be ejusdem generis. *See* 30 I.C. 1004=26 Cr.L.J. 716. Election of a President by persons who had not taken the oath is invalid. 75 I.C. 620=1924 M. 515=45 M. L.J. 543. A statutory body a Municipality acting under a statute must keep strictly within its statutory powers. It is obviously the duty of a Municipality which is issuing orders which interfere with the right of an owner to repair or alter his own house on his own property in the manner which is most convenient to himself, to be careful that their orders are based on the provisions

of the statute applicable to the particular case in question. 34 Bom.L.R. 143=1932 B. 259. The main object for which powers of Local Self Government are transferred to Municipal Corporations under this Act is that the City Fathers should look after the health of the city and the comfort and well-being of its residents. But it is not correct to say that for the well-being of such public subjects, it may not in certain instrances be necessary or in any case be not proper for them to discuss political subjects or that the discussion of such subjects is *ultra vires.* 127 I.C. 690=1930 S. 287.

CONSTRUCTION OF ACT.—Such construction of the provisions of the Act as would facilitate the carrying out of the object of the Act ought to be adopted. 1928 B. 104 =30 B.L.R. 169=108 I.C. 488. Such construction should be made as would encroach least on the rights of individual citizens. 54 A. 1=33 Cr.L.J. 416=1932 A.L.J. 15=1932 A. 110. Penal provisions of the Act have to receive a strict construction. 2 P.R. 1915 Cr.=28 I.C. 734; 56 A. 241=35 Cr.L.J. 704=1934 A. 39. The Madras Local Boards Act (XIV of 1920) is in *pari materia* with the District Municipalities Act and it can be referred to in construing this Act. 42 L. W. 199 =1935 M. 657=69 M. L. J. 221. Indirect and capricious method cannot be deemed to have been contemplated by Legislature when direct method is provided by the Act. 1930 B. 340=32 B.L.R. 768= 127 I.C. 181.

PROCEDURE.—Where no procedure is provided by the Act, the C. P. C., may be followed. 1925 C. 934=52 C. 670=29 C. W.N. 817=88 I.C. 862.

RULES UNDER THE ACT.—Rules framed under the Municipal Law must be consistent with the Act. Rules inconsistent with the Act are *ultra vires.* 19 Cr.L.J. 392=34 N. L.R. 157=44 I.C. 744. Rules validly made under the Act have force of law. 46 C. 132=50 I.C. 307. *See also* 118 P.L.R. 1911. Rules of the Municipal Account Code have as much the force of law as the Act itself. 24 A.L.J. 605=1926 A. 517=96 I.C. 5.

COLLECTOR ACTING UNDER RULES—"IF COURT".—The District Collector acting under the rules under the Act is not a "Court" for purposes of S. 195, Cr. P. C. *See* 2 I.C. 426=10 Cr.L.J. 9.

BYE-LAW.—A bye-law which is manifestly unreasonable is unjust and *ultra vires.* 22 Cr.L.J. 739=64 I.C. 129=2 L. 239. The Municipal Committee is not precluded from acquiring title by adverse possession under the Act. 1928 L. 534=77 I.C. 509. Expression Governor-in-Council in the Act should since the Government of India Act. 1919, be read as the Governor acting with Ministers. 1927 M. 22=1926 M.W.N. 842 =99 I.C. 18. A bye-law should be reasonable. 2 L. 239=64 I.C. 129.

BYE-LAWS. — Construction — Ootacamund Municipality By-law No. 54—"Other building material"—Sand.

The expression "other building material" in by-law No. 54 of the Ootacamund Municipality does not include sand. See 16 Cr.L. J. 716=30 I.C. 1004=1916 Mad. 1028 (1).

OLD AND NEW ACTS.—An offence committed before the coming into force of the Act cannot be punished under it, if it contains no saving clause. 18 Cr.L.J. 352=15 A.L.J. 159=39 I.C. 736. See also 40 A. 105. Proceedings for contravention of the old Act as well as the new Act—Procedure in new Act applies. 1928 C. 207=55 C. 964 =32 C.W.N. 454. A Municipality can grant under the new Act sanction to prosecute for an offence committed under the old Act. 18 Cr.L.J. 700=15 A.L.J. 530=40 I. C. 700. Grant of sanction under old Act for building—Effect of new Act on sanction See 9 P.R. 1905=14 P.L.R. 1905.

JURISDICTION OF CIVIL COURTS.—A person aggrieved by any resolution or order passed by the Municipal Committee is entitled to claim redress in the Civil Court if he can satisfy it that the act of the Committee is arbitrary, oppressive or *ultra vires.* 115 I.C. 755=1929 L. 774. *See also* 90 P.R. 1898 and cases cited therein; 58 P.R. 1907. Dispute as to title between municipality and a private individual must be settled by a Civil Court. 22 Cr.L.J. 25=59 I.C. 137 (C.) *See also* 1930 A.L.J. 244=120 I.C. 547—An order or direction of a Municipality cannot be questioned on the merits. But its legality can be questioned in any Court. 43 A. 644=63 I.C. 410. It is a well-recognized rule of the law that when it is alleged that the action of the Municipal Committee is *ultra vires* or is not covered by authority of the Act, the Civil Courts have power to interfere. It is only when the action of the Municipal Committee has been exercised in conformity with the powers conferred upon it by the Municipal Act that the jurisdiction of the Civil Courts is ousted. Their discretion as to the mode of action is not subject to a scrutiny by the Civil Courts but their power to take that action is always open to examination by such Courts. 93 I.C. 827=1926 L. 461. A suit for declara tion, that the plaintiff's election as a Commissioner of the Municipality is valid, is one of a civil nature cognizable by the Civil Court. 37 C.W.N. 122. Building quarters for Municipal servants being for promoting public convenience is within the discretion of the Municipality and Courts of Law cannot interfere with its discretion. 1925 Bom. 538=27 Bom.L.R. 1130=90 I. C. 695. The powers conferred on the Municipal Committees ought to be strictly

Repeal of enactments.

2. The enactments mentioned in Schedule I are repealed to the extent specified in the fourth column thereof.

Definitions.

3. In this Act unless there is anything repugnant in the subject or context—

[* * * * *] (Omitted by Madras Act II of 1938.)

'Anglo-Indian.'

[1][(1) 'Anglo-Indian' shall have the same meaning as in clause (2) of Article 366 of the Constitution.]

'Appoint.'

[2][1-B)] 'Appoint' includes to appoint temporarily or in an officiating capacity.

'Appointment.'

(2) 'Appointment' includes temporary and officiating appointments.

'Building.'

(3) 'Building' includes a house, out-house, stable, latrine, shed, hut, wall (other than a boundary wall not exceeding eight feet in height) and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever.

LEG. REF.

[1]Clauses (1) and (1-A) were inserted by S. 4 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930); Cl. (1) was omitted and Cl. (1-A) was re-numbered as Cl. (1) by Sec. 3 (1) (i) of Madras Act (II of 1938) and for the clause as so re-numbered the present clause was substituted by A.A.O. 1950.

2. Clause 1 of the original section was renumbered as clause (1-B) by section 4 (i) of Madras Act X of 1930.

---

construed as they are an interference for the public good with the ordinary rights and privileges of the public. The Committee therefore ought to exercise these extraordinary powers strictly in accordance with law and procedure. 56 P.R. 1911=9 I.C. 889. A statutory body like a Municipality acting under a statute must keep strictly within its statutory powers. 56 Bom. 135=137 I.C. 545=34 Bom.L.R. 143.

Procedure in trial of offences under the Act—When summary trial proper. See 2 P.R. 1890 Cr. Suit against chairman of municipality for malicious prosecution—Notice. See 152 I.C. 393=1934 A.L.J. 1149. The Crown is not bound by the Municipal Act, if the Crown is not expressly or by necessary implication referred to in the provisions of the sections. 58 Bom. 635=36 Bom.L.R. 820=1934 Bom. 379. Offences under Madras Municipalities Act, though punishable also under Ch. 9-A, Penal Code, do not require Government santion. 1924 M. 487, Foll. 52 M. 695=30 Cr.L.J. 191=A.I.R. 1928 M. 1158=57 M.L.J. 331.

SEC. 3, CL. (3).—A wing and tower newly erected in addition to a building fall within the definition of building in S. 3. 1 M.L.J. 37. Shed made of straw and standing on either side supported by four poles cannot invariably be considered to be a building. 1934 A.L.J. 541=149 I. C. 612=1934 All. 190. A building means a structure with a roof. 1921 Nag. 147=22 Cr.L.J. 754=64 I.C. 274.

SEC. 3 (3), 3 (24).—"Building"—"Reconstruction"—Meaning of. Building as defined in S. 3 (3), no doubt includes a wall; but the definition should be applied appropriately according to the context. The mere demolition and reconstruction of walls on new foundations cannot be held to amount to "reconstruction" of a building. 35 Bom. 412. rel. on; 67 L.W. 712=(1954) 2 M.L.J. 556.

COW-SHED is a building. 1926 Nag. 281=92 I.C. 796. Re-building of a wall from its foundation is equivalent to "building". 1923 B. 407=76 I.C. 478; 1928 B. 389=30 Bom.L.R. 1082=112 I.C. 564. A wooden shed of dimensions 10 fit. x 8 ft. x 8 ft. roofed by tin sheeting, and used for sleeping purposes at night was held to be a "building" though mounted on wheels which permitted it to be moved from one part of the site, on which it stood, to another. (29 L.J.C.P. 1 and 49 I.P. 661, Foll.) 85 I.C. 379=5 L. 543=1925 L. 252. Where the wooden partitions are substantial affairs, completely sub-dividing the building and leaving no means of communication between different portions and they reach the ceiling and are in fact walls though constructed of

'Building line.'

(4) 'Building-line' means a line which is in rear of the street alignment and to which the main wall of a building abutting on a street may lawfully extend.

'Carriage.'

[1][(5) 'Carriage' means any wheeled vehicle with springs or other appliances acting as springs and includes any kind of bicycle, tricycle, rickshaw and palanquin, but does not including any motor vehicle within the meaning of the Indian Motor Vehicles Act, 1914.*]

'Cart.'

[1][(6) 'Cart' includes any wheeled vehicle which is not a carriage but does not include any motor vehicle within the meaning of the Indian Motor Vehicles Act 1914.*]

'Casual vacancy'
'Casual election.'

(7) 'Casual vacancy' means a vacancy occurring otherwise than by efflux of time [2][. . . .] and 'casual election' means an election held on the occurrence of a casual vacancy.

'Company.'

[3][(8) 'Company' means a company as defined in the Indian Companies Act, 1913,[3-a] or formed in pursuance of an Act of Parliament †[of the United Kingdom] or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British

---

LEG. REF.

1. These clauses were substituted for the original clauses by Sch. I to the Madras Motor Vehicles Taxation Act, 1931 (Madras Act III of 1931).

*See now the Motor Vehicles Act (1939) (Central Act IV of 1939).

2. The words 'in the office of an elected councillor, vice-chairman, or chairman' were omitted by S. 4 (ii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. This clause was substituted for the original clause by S. 4 (iii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3-a. *See* now the Companies Act 1956 (Central Act I of 1956).

†Inserted by A.A.O., 1950.

---

wood, they are not merely temporary erections but are clearly a material alteration to the building. 159 I.C. 369=37 P.L.R. 173 =1935 Lah. 445. The erection of a mere fence or boundary wall is not an offence. But where such a wall is built so as to enable the occupier of the main house to use the enclosed area as part of his habitation it comes within the definition of a "building". 1923 R. 65=24 Cr.L.J. 732=73 I.C. 972. Compound wall—if building. *See* 1942 Mad. 256=54 L.W. 754=1942 M.W.N. 267=(1941) 2 M.L.J. 1093. "Lodging house" meaning explained. 19 Cr.L.J. 370=44 I.C. 674. An extended door step has been held to be a building. Rat. Un. Cr. C. 483, also a corrugated ironshed. 7 C.L.J. 243; a verandah. 1 P. 26; the foundation of a building. 51 B. 818; a wing or tower newly erected, 1 M.L.J. 37; a wall rebuilt, 8 M.L.T. 431; 35 B. 236; 26 I.C. 651.

"FIXTURE"—MEANING OF.—A platform built by an owner as an integral part of his building over a portion of the street is not a fixture. 28 C.L.J. 494=49 I.C. 93. The words "when a fixture has been attached" mean that the building must be first in existence and the attachment of the fixture must be subsequent to the erection of the building. 21 C.W.N. 752=58 I.C. 352=29 C.L.J. 605. Sheets of tin attached to shop hinges and supported by props forming verandah are not fixtures. 1921 C. 385=48 C. 602=63 I.C. 155.

SEC. 3, CL. (4).—Although it is probable that it was never contemplated that detached areas should form part of one Municipality, there is nothing in the Act which prohibits the combination of detached areas and which makes it compulsory that the entire area within the Municipal limits must be a compact area consisting of contiguous parts. 56 All. 241=148 I.C. 603=1934 A.L.J. 80 =1934 All. 39.

SEC. 3, CLS. (5) AND (6).—Motor cars brought by chance visitors and used for more than short periods are not vehicles kept within the Municipality. 109 I.C. 367.

LORRY.—The main characteristics of a lorry is that it is vehicle for carriage of goods. 127 I.C. 514=1930 A. 222. Motor cars are included in the term carriage. 32 Cr.L.J. 946=132 I.C. 694=1931 Lah. 572; *see also* 33 Cr.L.J. 19=25 C.W.N. 21=61 I.C. 641.

Possession and includes any firm or association carrying on business in the Presidency of Madras whether incorporated or not and whether its principal place of business is situated in the said Presidency or not.]

'Election authority.'

[1][(8-A) 'Election authority' means such authority not being the chairman or vice-chairman or a councillor as may be prescribed.]

'European.'

[1][(8-B) 'European' means any person of European descent who either was born in or as a domicile in the United Kingdom or in any British Possession or in any [2](part) of India, or whose father was so born or has or had up to the date of the birth of the person in question such a domicile.]

Executive authority.

[3][(8-C) 'Executive authority' means—

(i) in the case of municipalities included in Schedule IX or notified under sub-section (1) of section 12-C, the commissioner, or if there is no commissioner in charge the chairman; and

(ii) in the case of other municipalities, the chairman.

Explanation.—A commissioner shall be deemed to be in charge when he is absent on casual leave.]

'Filth.'

(9) 'Filth' includes sewage, nightsoil, dung, dirt, putrid and putrifying substance and all offensive matter.

'Hill-station.'

(10) 'Hill-station' means a place specified in Schedule II and includes any other place which may be notified by the [4][(State)† Government] as a hill-station.

'Hut'.

(11) 'Hut' means any building which is constructed principally of wood, mud, leaves, grass or thatch and includes any temporary structure of whatever size or any small building of whatever material made which the council may declare to be a hut for the purposes of this Act.

'Indian Christian.'

[5][(11-A) 'Indian Christian' means a native of India who is, or in good faith claims to be, of unmixed Asiatic descent and who professes any form of the Christian religion.]

'Latrine'.

(12) 'Latrine' includes privy, water-closet and urinal.

'Legislative Council'.

§(12-A) * * * * *]

'Local authority'.

[6][(12-B) 'Local authority' includes a cantonment authority.]

'Municipal office'.

(13) 'Municipal office' means the principal office of any municipal council.

LEG. REF.

1. These clauses were inserted by S. 4 (iv) *ibid.*

2. Substituted by Madras Act (XXV of 1957).

3. This clause was substituted by S. 2 of the Madras District Municipalities (Amendment) Act 1935 (Madras Act XVIII of 1935).

4. Substituted by A.O., 1937.

†Substituted by A.L.O., 1950.

5. This clause was inserted by S. 4 (v) of Mad. Act X of 1930.

§Omitted by A.O., 1937.

6. This clause was inserted by S. 4 (vi), *ibid.*

SEC. 3 (8-C)—EXECUTIVE AUTHORITY.—The definition does not include all servants and officers of a municipality to whom the powers of Commissioner are delegated.

'Nuisance'.

(14) 'Nuisance' includes any act, omission, place or thing which causes or is likely to cause injury, danger, annoyance or offence to the sense of sight, smell or hearing or which is or may be dangerous to life or injurious to health or property.

'Occupier'.

(15) 'Occupier' includes any person for the time being paying or liable to pay to the owner, the rent or any portion of the rent of the land or building or part of the same in respect of which the word is used.

'Ordinary vacancy'. 'Ordinary election'.

[1][(16) 'Ordinary vacancy' means a vacancy occurring by efflux of time and 'ordinary election' means an election held on the occurrence of an ordinary vacancy.]

'Owner'.

(17) 'Owner' includes (a) the person for the time being receiving or entitled to receive whether on his own account or as agent, trustee, guardian, manager or receiver for another person, or for any religious or charitable purpose, the rent or profits of the property, in connexion with which the word is used, and (b) the person for the time being in charge of the animal or vehicle, in connexion with which the word is used.

'Palanquin'.

(18) 'Palanquin' includes tonjans, manchils and chairs carried by men by means of posts, but not slings or cots used for the conveyance of children or aged or sick people.

'Prescribed'.

(19) 'Prescribed' means prescribed by the [1][†(State) Government] by rules made under this Act.

'Private street'.

(20) 'Private street' means any street, road, square, court, allev passage or riding-path, which is not a 'public street' but does not include a pathway made by the owner of premises on his own land to secure access to or the convenient use of such premises.

LEG. REF.

1. This clause was substituted for the original clause by S. 4 (vii) of the Mad- District Municipalities (Amendment) Act, 1930 (Madras Act (X of 1930).

2. Substituted by A.O., 1937.

†Substituted by A.L.O., 1950.

Hence the protection under S. 353-A of the Act is afforded only to the Commissioner and to the other person mentioned therein; it does not extend to all persons to whom the powers are delegated by the Commissioner, though they are servants of the Municipality. (1956) Mad. 1171=69 L.W. 504=(1956) 1 M.L.J. 204.

SEC. 3 (11)—"HUT"—TEMPORARY AWNINGS OVER BUNKS.—Temporary flat pandals usually put up over bunk-shops do not fall within the definition of hut in S. 3 (11); they are not buildings constructed principally of wood, mud, leaves or grass or thatch. *See* (1959) 2 M.L.J. 284.

Sec. 3, Cl. (17).—See 13 Pat. 693=15 Pat.L.T. 424=1934 Pat. 357.

'Owner'.—Property tax — Liability of landholder—Holding in possession of occupancy ryots — Landholder's liability as owner. See 58 L.W. 433=223 I.C. 352= A.I.R. 1946 Mad. 31=(1945) 2 M.L.J. 244.

Sec. 3, sub-cls. (20) and (21).—When the legislature has vested a street in a municipal council, such vesting does not transfer to the municipal authority the right of the owner in the site or soil over which the street exists. See 25 M. 635= 12 M.L.J. 37 cited under S. 1, supra. Building a buttress wall to a compound wall projecting into a municipal street is an offence under S. 180. 20 L.W. 834= 47 M.L.J. 917. Art. 146-A of the Act cannot reasonably be restricted to streets or roads formed by the municipality on lands belonging to or acquired by it in proprietary right. 25 M. 635=12 M.L.

'Public Street.'

(21) 'Public street' means any street, road, square, court, alley, passage or riding path [1][over which the public have a right of way] whether a thoroughfare or not, and includes—

(a) the roadway over any public bridge or causeway;

(b) the footway attached to any such street, public bridge or causeway; and

(c) the drains attached to any such street, public bridge or causeway and the land, whether covered or not by any pavement, veranda, or other structure, which lies on either side of the roadway up to the boundaries of the adjacent property whether that property is private property or property belonging to [2][the Government.]

'Public Water Courses, etc'.

(22) 'Public water-courses, springs, wells and tanks' include those used by the public to such an extent as to give a prescriptive right to such use.

'Railway'.

(23) 'Railway' includes a tramway.

LEG. REF.

1. These words which occurred after the words 'whether a thoroughfare or not' were placed before those words by S. 4 (viii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. The words 'the Crown' were substituted for the word 'Government' by Adaptation of Indian Laws Order, 1937, and the word 'Government' was substituted for 'Crown' by A.L.O., 1950.

J. 37 (19 M. 156, Cons.) If a vacant space is in fact a road or footway which is accessible to the public, it is a street. 24 S.L.R. 361=122 I.C. 385=A.I.R. 1930 S. 30.

'Street'.—The expression 'Street' is defined as meaning any road, foot-way, square, Court, alley or passage accessible whether permanently or temporarily to the public whether a thoroughfare or not. As regards accessibility, mere physical access apart from the right of access cannot be regarded as test. (30 B. 558; 6 B. 686; 20 B. 146; 60 P.L.R. 1918, Ref. 71 I.C. 775=1924 L. 393.) It is expressly laid down by the legislature that a street shall not include any part of a vacant space which the occupier of any such building has a right at all hours to prevent all other persons from using as aforesaid. Where therefore the occupiers of a building can by shutting the gate prevent all persons from having access to a passage, the passage, cannot be held to be a street nor can it be called a lane. 122 I.C. 564=31 P.L.R. 193=1930 L. 547. A lane which is accessible to the public whether permanently or temporarily is a street within Cl. (13). 1922 L. 41=68 I.C. 675. Where the pavement of the street was carried out with the express consent of the proprietors out of municipal funds and there was no agreement that the street should not thereby become a public street it comes within the purview of the definition of a public street. It would be a contradiction in terms that a street should be a public street and still it should not be open to a member of the public. The ownership of the soil may remain in the proprietors but they have no right to prevent the public from using the street as such. 151 I.C. 169=1934 L. 936. Where a courtyard was paved by the Municipality and swept by the Municipal sweepers, to the knowledge of the owner, his consent may be presumed and the courtyard falls within the definitions of 'Public street'. 1930 A.L.J. 1039=124 I.C. 556=1930 A. 531. The fact that a Municipal Board has on several occasions demolished a Chabutra constructed by a party on the disputed land and realised the cost does not amount even to an assertion of title on the part of the Municipal Board and is absolutely inconclusive. 1930 A.L.J. 244=120 I.C. 547=1930 A. 26.

The Expression 'Accessible to the Public' or 'over which the public have a right of way' means open to all the public in fact, whether by right or permission. 73 I.C. 725=1923 L. 417. See also 1924 L. 393=71 I.C. 775. A road includes a public right of way. 22 C.W.N. 599=46 I. C. 518 (1). The Municipality have control over private pathway made public by usage. 43 C. 130=20 C.W.N. 613=33 I.C. 271. The land on either side of a road up to the defined boundary belongs to the Municipality, as such land is covered by the definition of 'street'. 116 I. C. 806=1929 A. 382. In the case of a public way it is the surface and not the

'Reconstruction'. (24) 'Reconstruction' of a building includes—

(a) the re-erection wholly or partially of a building after more than one-half of its cubical contents has been taken down or burnt down, or has fallen down whether at one time or not;

(b) the re-erection wholly or partially of any building of which an outer wall has been taken down or burnt down or has fallen down to or within ten feet of the ground adjoining the lowest storey of the building and of any frame building which has so far been taken down or burnt down or has fallen down as to leave only the frame work of the lowest storey;

(c) the conversion into a dwelling-house or a place of public worship of any building not originally constructed for human habitation or for public worship, as the case may be, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only or the conversion of a dwelling-house into a factory;

---

soil which constitutes the street. 85 I. C. 304=1924 A. 599=22 A.L.J. 729.

'Lane'.—The word 'lane' is not generally defined in the Municipal Acts but it signifies a narrow road or street. 122 I. C. 564=31 P.L.R. 193=1930 L. 547. A lane which is accessible to the public whether permanently or temporarily is a street within S. 3 (13). 1922 L. 41=68 I.C. 675. Where a passage which was obstructed by a gate was used as a means of access to the houses situate in the katra only by the occupiers of those houses, held, it cannot be held to be a street as defined in the Punjab Municipal Act, nor can it be called a lane. 31 P.L.R. 193 =122 I.C. 564=1930 L. 547. In determining the question whether a road through a private property is a public highway, though not expressly dedicated to the public, it is of crucial importance to distinguish between evidence showing an intention to dedicate to the public generally and evidence showing that visitors to or traders with tenants whose shops abut on the road have by permission a right of passage. The Privy Council held that having regard to the evidence in the case and the previous conduct of the Municipality, the road in question was not a public street within the Act. 1 L. 117=13 P. L. R. 1920=38 M.L.J. 455 (P.C.). Whether a particular land is a public street or otherwise, is to be determined by the application of criteria determining it as mentioned in the Act in force when the suit is brought. 124 I.C. 556=1930 A. L.J. 1039. Where plaintiff's predecessors built a market on a plot of land and let it out to shop-keepers and left an open space with openings into thoroughfares at various points, there is a presumption of dedication to the public. The onus of proving that it was limited to a particular class will be on the owner of the site. 108 P.R. 1916=35 I.C. 458. A lane or street over which the public as such have no right to passage does not become a 'public street' merely because there is an underground sewer of old times running under it. 70 I. C. 416=1922 A. 386. When a street is vested in a Municipal Committee it has power only to the extent of exercising its rights over it in order to maintain it as a street. It cannot use the public street otherwise than as a street and it cannot interfere with the enjoyment of the right of way by the public by leasing portions of it to private individuals. (25 M. 635, Foll.). 5 L.L.J. 26=1923 L. 272. All public streets vest in the Municipal Committee; and consequently the absence of the inclusion of the disputed road in the Municipal jamabandi is prima facie good evidence which tends to negative the plea that the road is a public road. 29 N.L.R. 361=1933 Nag. 267. Public lane in Municipality vests in the Municipal Board—With regard to acts of interference with the surface of the soil and with the use of the land as a public lane, no one except the Municipal Board has a right to complain. 70 I.C. 758=1922 A. 485. A limited access by the public to a private place does not operate to convert it into a public street. 109 P.R. 1916= 35 I. C. 355 (6 B. 686 and 20 B. 14, Ref. to.) A private serai let to tenants had its gateways broken down. The Municipality cannot interfere with the proprietors setting them up. 109 P.R. 1916=35 I.C. 355.

Rights of Municipality.—Since public streets are vested in the Municipality, the latter is empowered to levy fees on boardings and advertisements in public streets, these being encroachments. See (1957) 2 An.W.R. 389=1957 Andh. Pra. 1053, dissenting from and distinguishing. (1941) 2 M.L.J. 145.

Sec. 3 (24).—See 25 L.W. 475=1927 M. 442 cited under S. 317, infra.

(d) the re-conversion into a dwelling-house or a place of public worship or a factory of any building which has been discontinued as, or appropriated for any purpose other than a dwelling-house or a place of public worship or a factory as the case may be.

'Residence'—'Reside'.

(25) 'Residence'—'Reside'—A person is deemed to have his 'residence' or to 'reside' in any house if he sometimes uses any portion thereof as a sleeping apartment, and

a person is not deemed to cease to reside in any such house merely because he is absent from it or has elsewhere another dwelling in which he resides, if he is at liberty to [1][return to such house] at any time and has not abandoned his intention of returning.

'Rubbish'.

(26) 'Rubbish' means dust, ashes, broken bricks, mortar, broken glass, and refuse of any kind which is not filth.

'Salary'.

(27) 'Salary' means pay and acting pay or payment by way of commission and includes exchange compensation allowances, but not allowances for house rent, carriage-hire, or travelling expenses.

'Scavenger'.

(28) 'Scavenger' means a person employed in collecting or removing filth, in cleansing drains or slaughter-houses or in driving carts used for the removal of filth.

Scheduled castes.

[2][(28-A) 'Scheduled castes' shall have the same meanisg as in clause (24) of Article 366 of the Constitution, but until the first electoral rolls for the territorial constituencies of the Madras Legislative Assembly provided under the law made in pursuance of the constitution have been finally published, shall have the same meaning as in the Government of India (Scheduled Castes) Order, 1936.]

'Street alignment'.

(29) 'Street alignment' means a line dividing the lands comprised in and forming part of a street from the adjoining land.

'Water-course'.

(30) 'Water-course' includes any river, stream, or channel whether natural or artificial.

'Year'.

(31) 'Year' means the financial year.

LEG. REF.

1. These words were substituted for the words 'return thereto' in the original clause by sub-S. (4) (ix) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. Substituted by A.A.O., 1950 for the original Cl. (28-A), which was inserted by S. 3 (1) (ii) of Madras Act (II of 1938).

Sec. 3 (25).—Residence—meaning of. See 24 L.W. 218=91 I.C. 933 =1926 M. 448=50 M.L.J. 77.

Construction—Reside—'Cease to reside' —Meaning of—Absence at hill-station for certain period — If cessor of residence. See 48 L.W. 329=(1938) 2 M.L.J. 353, cited under S. 93, infra.

PART II.

Establishment, Constitution and Government of District Muncipalities.

CHAPTER II.

Creation and Abolition of Municipalities.

Creation of municipalities.

4. (1) The [1][(State) Government] may by notification declare [2][their intention]—

(a) to constitute as a municipality any town, village, hamlet, bazaar, station or other local area or any group of the same in the immediate neighbourhood of one another; or

(b) to exclude from a municipality any local area comprised therein and defined in such notification; or

(c) to include within a municipality any local area in the vicinity thereof and defined in such notification:

Provided that no cantonment shall be included within a municipality, [3][. . . . . . .]

(2) Any inhabitant of a local area or tax-payer of a municipality in respect of which any such notification has been published may, if he desires to object to anything therein contained, submit his objection in writing to the [1][(State) Government] within six weeks from the publication of the notification and the [1][(State) Government] shall take, all such objections into consideration.

(3) When six weeks from the publication of the notification have expired, and the [1][(State) Government] [4][have considered] the objections, if any, which have been submitted, [5][they may], as the case may be, by notification declare to be a municipality, or exclude from or include in a municipality, the local area or any portion thereof.

(4) This Act shall come into force in, or cease to apply to, any municipality, or part thereof, as the case may be, on such date as may be specified in the notification under sub-section (3).

LEG. REF.

1. The words 'Provincial Government' were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word 'State' was substituted for the word 'Provincial' by A.A.O., 1950.

2. These words were substituted for the words 'his intention' in the original sub-section by the Schedule to the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. The words 'without the sanction of the Governor-General in council previously obtained' were omitted by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

4. These words were substituted for the words 'has considered' in the original sub-S. (3) by the Schedule to the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

5. These words were substituted for the words 'he may' in the original sub-S. (3) by the Schedule ibid.

Sec. 4.—A certain person claimed, exemption on payment of profession-tax to the Bellary Municipality on the ground that during the half-year he paid 'for profession tax' to the Bellary Cantonment. Held, that the Bellary Cantonment, not having been declared a municipality was not a municipality constituted under the Act; and therefore the payment made by the defendant to the Bellary Cantonment, not having been made to any other municipality, does not exempt the defendant from his liability to pay to the Bellary Municipality. 4 M.L.T. 477. See also 16 M.L.J. 582=29 M. 539, cited under S. 5, infra.

Sec. 4 (1).—Inclusion of area in Municipality — Notification — Necessity — Frenchpet — Inclusion of — Absence of notification — Effect. By reason of the

[1](5) If any local area in which the Madras Local Boards Act, 1920, is in force is constituted as or included in a municipality the [2][(State) Government] may pass such orders as they may deem fit as to the transfer to the council of such municipality or disposal otherwise of the assets or institutions of any local board in the local area and as to the discharge of the liabilities, if [any, of such local board relating to such assets or institutions.]

Townships.

[2-a][4-A. (1) The State Government may, if a specific motion is passed to that effect by both Houses of the Legislature, declare any municipality or any specified area therein to be a township if it is an industrial, labour or institutional colony or a health resort.

(2) In regard to any municipality or any area declared to be a township under sub-section (1), the State Government shall, by notification, constitute a township committee.

(3) A notification issued by the State Government may direct that any functions vested in a municipal council by or under this Act shall be transferred to and performed by the township committee and shall provide for—

(i) the total number of members of the township committee;

(ii) the persons who shall be members of the township committee or the manner in which they shall be chosen;

(iii) the person who shall be the Chairman of the township committee or the manner in which he shall be elected or appointed;

(iv) the term of office of members and the chairman;

(v) the restrictions and conditions subject to which the township committee may perform its functions; and

(vi) the procedure of the township committee.

(4) The State Government may, by notification, direct that any of the provisions of this Act or of any rules made thereunder or of any other enactment for the time being in force elsewhere in the State of Madras but not in the municipality or specified area therein referred to in sub-section (1) shall apply to that municipality or area to such extent and subject to such modifications, additions and restrictions as may be specified in the notification.

(5) (a) If any difficulty arises in giving effect to the provisions of this section the State Government may, as occasion may arise, by order, do anything which appears to them necessary for the purpose of removing the difficulty.

LEG. REF.

1. This sub-section was substituted for the original sub-section by S. 5 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. Vide footnote 1 on p. 22.

2-a. Inserted by Madras District Municipalities (Amendment) Act (XIX of 1959).

Madras Enlargement of Area and Alteration of Boundaries Order, 1948, issued by the Governor-General, the issue of a fresh notification under S. 4 (1) for including the area known as Frenchpet in the Municipal area of Masulipatam town became wholly unnecessary. It was within the competence of the Governor-General to issue the said order under S. 290 of the Government of India Act, 1935, and the effect of the order is that the said area is deemed to have always formed part of Masulipatam town. The Act therefore must be deemed to have been in force all along in the said area and the notification constituting the said town a municipality would apply to the Frenchpet area as well. (1953) Mad. 763=(1953) 1 M.L.J. 536=1953 Mad. 647. See also (1957) M.L.J. (Cr.) 619=(1957) 2 An.W.R. 407 in which the case in (1953) 1 M.L.J. 536 was followed.

(b) All orders issued under clause (a) shall, as soon as possible after they are made, be placed on the table of both Houses of the Legislature and shall be subject to such modifications by way of amendments or repeal as the Legislature may make either in the same session or in the next session.

Explanation.—In this section, the term 'industrial, labour or institutional colony' means any area wherein the majority of the inhabitants are engaged in any industry or are labourers, or are connected with any institution in the area in any manner whatsoever.]

Abolition of municipalities.

5. (1) The [1][(State) Government] may by notification abolish any municipality to which this Act applies:

Provided as follows:—

(a) the [1][(State) Government] shall, before [2-3][they issue] such notification, communicate to the municipal council the grounds on which [4][they propose] to do so, fix a reasonable period for the municipal council to show cause against the proposal and consider its explanations and objections, if any;

(b) the notification shall contain a statement af the [1][(State Government's] reasons and shall be laid [5][before both *(Houses) of the (State)† Legislature.]

(2) From such date as may be specified in such notification, this Act and all notifications, rules, by-laws, regulations, orders, directions and powers issued, made or conferred under this Act, shall cease to apply to the area previously comprised in the municipality: [6][the balance of the municipal fund and all other property vested in the municipal council and all its liabilities shall stand, transferred to the †(State) Government or to such local or other authority or to such officer or other person as they may, by order, direct].

[7][(3) . . . . . .].

LEG. REF.

1. These words were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word 'State' was substituted for the word 'Provincial' by A.L.O., 1950.

2-3. There words were substituted for the words 'he issues' by the Schedule to the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

4. These words were substituted for the words 'he proposes' by the Schedule, ibid.

5. These words were substituted for the words 'on the table of the Legislative Council' by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

*Substituted for the word 'Chambers' by A.L.O., 1950.

†Substituted for the word 'Provincial' by A.L.O., 1950.

6. Substituted by Madras Act XXIV 1947.

7. This sub-section was omitted by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

Sec. 5.—On the supersession of a municipality the municipal councillors holding office at the time of supersession, no doubt cease to do so. But the municipality itself is left in tact, and supersession 'for a specified period' is but a suspension of the council, and not its total dissolution. The reconstituted council is a revived corporation revived with all its rights and liabilities which were suspended, but not destroyed. A suit, therefore, lies against the revived corporation for acts done by the superseded one. 16 M.L.J. 582=29 M. 539 (1 M. 335; 12 C. 323; 8 C. 468, D.).

Sec. 6.—A municipal council is a Corporation with power to contract and to do all things necessary for the purposes of its constitution, the municipal fund being held by it for the purposes of the Act. 35 M.L.J. 251=48 I.C. 128. The powers of a statutory corporation must be strictly con-

CHAPTER III.

Constitution of Municipal Authorities.

Authorities.

The municipal authorities and their incorporation.

[1][6. (1) The municipal authorities charged with carrying out the provisions of this Act are—

(a) a council;

(b) a chairman; and

(c) an executive authority.]

(2) The municipal council shall by the name of the municipality be a body corporate, shall have perpetual succession and a common seal and subject to any restriction or qualification imposed by this or any other enactment shall be vested with the capacity of suing or being sued in its corporate name, of acquiring, holding and transferring property movable or immovable, of entering into contracts and of doing all things necessary for the purpose of its constitution.

Constitution of council.

7. (1) [2][The Municipal council] shall consist of such number of councillors as may be notified by the [3][(State) Government] in accordance with the following table:—

			Number of councillors.
Muncipalities with a population—			
Not exceeding 20,000 at the last census	..	..	16
Exceeding 20,000 but not exceeding 30,000	..	..	20
Exceeding 30,000 but not exceeding 40,000	..	..	24
Exceeding 40,000 but not exceeding 50,000	..	..	28
Exceeding 50,000 but not exceeding 100,000	..	..	32
Exceeding 100,000 ..	..	..	36

[4][(2) All the councillors of every municipality shall be elected.

(3) In any municipality, the [3][State Government] may [5][. . . . .], by notification, from time to time, reserve seats for

LEG. REF.

1. This sub-section was substituted for the original sub-section by S. 3 of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. Substituted by S. 2 (1) of the Madras District Municipalities (Amendment) Act (XXIII of 1950) for the original words, brackets, figures and letter, 'subject to the provisions of sub-S. (3-B)' which were substituted by Madras Act II of 1947.

3. These words were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word (State) was substituted for the word 'Provincial' by A.L.O., 1950.

4. These sub-sections were substituted for the original sub-sections (2) and (3) by S. 6 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

5. The words 'in their discretion' were omitted by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

---

strued, and what is not permitted to such a body must be taken as forbidden. 36 M. 113=21 M.L.J. 790. (11 I.C. 665, Foll.; 26 M. 156; 24 M. 401, Ref. to.) As to distinction between acts done by 'the Commissioners' and acts done by 'the Commissioners at a meeting,' see 1926 C. 1073 =95 I.C. 726.

Secs. 7 and 8.—The status of the municipal councillor in the Madras Presidency is subject to election rules framed by the Governor-General in Council. The term 'election' means a valid election as per election rules framed by the Governor-General

*(a) [1][Members of the scheduled castes],

*(b) Anglo-Indians, or

*(c) Women

and determine the number of such seats:

Provided [2][* *] that no seat shall be reserved for any of the communities mentioned in clauses (a) to (e) if at the last census such community constituted more than one-half of the total population of the municipality.

[3][(3-A) The total number of seats reserved under sub-section (3) shall not exceed one-fourth of the strength of the municipal council as notified under sub-section (1).

[4](3-B) [* * * * *]

(4) In reserving seats for the communities mentioned in clauses (a) to (e) of sub-section (3) the [5][State Government] shall have due regard to their number and importance.

(5) Nothing contained in [6][this section] shall be deemed to prevent members of any community or women, for whom seats have been reserved thereunder in any municipal council, from standing for election to the non-reserved seats in the council.]

Term of councillors and filling up of seats.

8. (1) The term of office of [7][. . .] councillors shall, save as otherwise expressly provided [8][in this Act], be three years beginning and expiring at noon on the first day of November.

(2) [9][Ordinary vacancies] in the office of [10][a councillor] shall be filled at ordinary elections which shall be fixed by the [11][election authority] to take

---

LEG. REF.

*Original Cls. (a), (b) and (d) were omitted and the Original Cls. (c), (e) and (f) were re-lettered as Cls. (a), (b) and (c) by Madras Act XXIII of 1950.

1. These words were substituted for the words 'Adi-Dravidas' by S. 3 (2) of the Madras City Municipal, District Municipalities and Local Boards (Amendment) Act, 1938 (Madras Act II of 1938).

2. Omitted by Madras Act II of 1947.

3. Inserted by Madras Act II of 1947.

4. Sub-S. (3-B), which was inserted by Madras Act II of 1947 was omitted by Madras Act XXIII of 1950.

5. These words were substituted for the word 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the 'State' was substituted for 'Provincial' by A.L.O., 1950.

6. Substituted by Madras Act II of 1947.

7. The word 'elected' in the original sub-section (1) was omitted by section 7 (i) (a) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

8. The words 'in this Act' were inserted by section 7 (i) (b) ibid.

9. These words were substituted for the words 'Vacancies arising by efflux of time' in the original sub-section (2) by section 7 (ii) (a) ibid.

10. These words were substituted for the words 'an elected councillor' in the original sub-S. (2) by S. 7 (ii) (a) ibid.

11. These words were substituted for the word 'chairman' by section 7 (ii) (b) ibid.

---

in Council. The term 'election' means a valid election not set aside under law. 36 M. 120 =21 M.L.J. 878=12 I.C. 311.

The municipality has an independent existence apart from the Councillors, and therefore the failure to fill up one of the seats of the councillors would not invalidate the constitution of the council. A vacancy in the office of one of the councillors is no bar to the election of a chairman. See (1957) An. W. R. 561=1958 An.L.T. 118, see also (1954) 1 M.L.J. 102.

S. 8.—There is nothing in the subject or context of the Municipal Act repugnant to the application of the provision to more than one outgoing member, where after the expiry of three years from a general election all the members continued to hold office and on a later date the Commissioner notified the names of the persons appointed for the vacant seats: held, that the procedure was legal. 134 I.C. 113=1932 L. 26.

place on such [1][lay or] days in the months of August and September next preceding the vacancies as he thinks fit:

[2][Provided that the [3][(State) Government] may for sufficient cause direct or permit the holding of any ordinary election after the end of September].

[4][Provided further that State Government may, for sufficient reasons, direct from time to time, the postponement or alteration of the date of an ordinary election or any stage thereof, and the election authority shall give effect to such direction].

[5][(3) A councillor elected at an ordinary election held after the occurrence of a vacancy shall enter upon office forthwith but shall hold office only so long as he would have been entitled to hold office if he had been elected before the occurrence of the vacancy.]

[6][(4)] A casual vacancy in the office of [7][a councillor] shall be filled at a casual election which shall be fixed by the [8][election authority] to take place as soon as may be after the occurrence of the vacancy:

Provided that no casual election shall be held to fill a vacancy occurring within three months before the ordinary date of retirement and that such vacancy shall be filled at the next ordinary election.

[6][(5)] A councillor elected at a casual vacancy shall enter upon office forthwith but shall hold office so long only as the councillor in whose place he is elected would have been entitled to hold office if the vacancy had not occurred.

S. 8. **Andhra Amendments:** Andhra Act XI of 1955, has

(a) substituted the word "July" for "November", in sub-section (1);

(b) inserted the following sub-sections (1-A) and (1-B);

(1-A) The State Government may, by notification for sufficient cause to be stated therein, direct that the term of office of councillors of any council as a whole shall extend up to or expire at, noon on such date as may be specified in the notification, such date being not later or as the case may be, earlier than three months from the date on which such term expires under sub-section (1); the State Government may, from time to time, by notification, alter such date and fix another date instead.

(1-B) (a) Where any date other than the first day of July of any year is fixed under sub-section (1-A), the State-Government shall cause elections to be so held to the council concerned that the newly elected councillors may come into office at noon on the date fixed as aforesaid.

(b) the term of office of the newly elected councillors shall expire—

(i) at noon on the first day of July immediately succeeding the expiry of three years from the date referred to in clause (a) if such date falls within any of the months of April, May and June, and

---

LEG. REF.

1. These words were inserted by section 7 (ii) (c) of Madras Act X of 1930.
2. This proviso was added by section 7 (iii) ibid.
3. See footnote No. 5, page 26.
4. Added by Madras Act II of 1947.
5. This sub-section was inserted by section 7 (iv) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).
6. Sub-sections (3) and (4) were renumbered as sub-sections (4) and (5) respectively by section 7 (v) ibid.
7. These words were substituted for the words 'an elected councillor' by section 7 (v) ibid.
8. These words were substituted for the word 'chairman' by section 7 (v) ibid.

(ii) at noon on the first day of July immediately preceding such expiry, if such date falls within any of the months July, August and September;

(c) has substituted the words "the months of April and May" for the words "the months of August and September", in sub-section (2); and

(d) has also substituted the words "after the end of May" for the words "after the end of september" in the first proviso to sub-section (2).

Procedure when no councillor is elected.

[1][9. (1) If at an ordinary or casual election held under section 8, no councillor is elected a fresh election shall be held on such day as the election authority may fix.

(2) If at such fresh election no councillor is elected, the council may, in the manner prescribed, elect a qualified person to fill the vacancy.

(3) The term of office of a councillor elected under this section shall expire at the time at which it would have expired if he had been elected at the ordinary or casual election, as the case may be.]

[2][10. (Omitted.)]

[3][11. (Omitted.)]

The chairman and vice-chairman of the municipality.

[4][12. (1) Every council shall elect one of its members to be its chairman.

[5][(2) Omitted.]

(3) The council shall elect one of its members other than the chairman to be its vice-chairman.

(4) A chairman shall be deemed to have vacated his office on the expiry of his term of office as a councillor or on his otherwise ceasing to be a councillor.

(5) A vice-chairman shall be deemed to have vacated his office—

LEG. REF.

1. This section was substituted for the original section by S. 8, of Madras Act X of 1930.

2. This section was omitted by section 9 ibid.

3. This section was omitted by section 4 of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

4. Sections 12 and 12-A were substituted for section 12 by section 11 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

5. This subsection was omitted by section 5 of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act (XV of 1933).

Sec. 9.—As to appilcability of the section, see 106 I.C. 205=1928 M. 141. 'If from any cause no councillor is elected at an ordinary election'—Meaning. 106 I.C. 205=1928 M. 141=53 M.L.J. 816. S. 9 (1) is not meant to apply to cases where an election had been held and is subsequently declared void. 46 M. L. J. 494=1924 M. 764. See also 36 M. 120, supra. S. 9, Cl. (1) applies only to cases where a valid election has been held under the previous section. It does not apply to all cases where elections have been contemplated but on account of various irregularities no councillor was elected. 39 M.L.T. 591=53 M.L.J. 816.

Secs. 12 and 13.—The act of the presiding member in declaring the result of the poll is a purely ministerial or administrative act and a writ of certiorari cannot be granted in respect of such an act. 33 L. W. 497=130 I.C. 509=1931 M. 122=60 M.L.J. 260.

Sec. 12 (7).—The sub-section in terms confers on the Revenue Divisional Officer power to convene a meeting only for the election of the chairman; it does not confer any power to convene a meeting for the election of a vice-chairman. A notice issued by the Revenue Divisional Officer to convene a meeting to elect a vice-chairman is illegal and amounts to a contravention of Rule 1 (2) (b) of the Rules framed under the Act. 66 M.L.W. 703=(1953) 2 M.L.J. 293=1953 Mad. 647.

(i) on the expiry of his term of office as a councillor or on his otherwise ceasing to be a councillor; or

(ii) on his election as chairman.

(6) When the office of chairman is vacant the vice-chairman shall exercise the functions of the chairman until a new chairman assumes office.

[(7) When the office of chairman is vacant (or the chairman has been continuously absent from jurisdiction for more than fifteen days or is incapacitated) and there is either a vacancy in the office of vice-chairman or the vice-chairman has been continuously absent from jurisdiction for more than fifteen days or is incapacitated, the revenue divisional officer shall, after giving notice of not less than seven clear days to the councillors, convene a meeting for the election of a chairman if there is a vacancy in that office and until a new chairman or vice-chairman is elected and assumes office or either the chairman or the vice-chairman returns to jurisdiction or recovers from his incapacity as the case may be the revenue divisional officer shall notwithstanding anything contained in this Act or in the rules or notifications thereunder, be ex-officio member and chairman of the council.] (Substituted by Madras Act XXXVIII of 1942.)

(8) An outgoing chairman or vice-chairman is eligible for re-election.

Explanation.—A new chairman or vice-chairman shall be deemed to have assumed office on his being declared elected as such.]

Procedure when no chairman or vice-chairman is elected.

[1][12-A. If at an election held under section 12 no chairman or vice-chairman is elected, a fresh election shall be held.]

Chairman, vice-chairman or councillor not to receive remuneration.

[2][12-B. No chairman vice-chairman or coun-
disposal of or under the control of the council, any
salary or other remuneration for services rendered
cillor shall receive or be paid from the funds at the
by him in any capacity whatsoever.]

Commissioners.

[3][12-C. (1) A commissioner shall be appointed by the State Government in the case of each municipality included in Schedule IX and in the case of any other municipality notified by the State Government in this behalf. Every notification issued under this sub-section shall specify the reasons therefor.

(2) The commissioner shall be a whole time officer of the municipality and shall not under take any work unconnected with his office without the sanction of the municipal council and the State Government.

(3) The State Government may recover from the Municipal Council concerned the whole of the salary and allowances paid to any commissioner appointed under sub-section (1), and such contribution towards his leave allowances, pension and provident fund as the State Government may, by general or special order, determine.

LEG. REF.

1. Vide foot-note 4 on page 28.

2. Section 12-B was inserted by section 6 of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

3. Section 12-C was substituted by Madras Act XXXI of 1955 for the original section 12-C, which was inserted by Madras Act XV of 1933.

(4) The State Government shall have power to regulate the methods of recruitment, conditions of service, pay and allowances and discipline and conduct of the commissioners appointed under sub-section (1).]

S. 12-C: Andhra Amendment.—

Andhra Act X of 1955 has omitted sub-sections (2), (3) and (5) of S. 12-C, and has substituted the following sub-sections (6) and (7) for sub-sections (6), (7) and (8).

"(6) The State Government shall pay out of the Consolidated Fund of the State, the salaries, allowances, leave allowances, pension and contributions, if any, towards the provident fund of the commissioners.

(7) The State Government shall have power—

(a) to regulate the classification, methods of recruitment, conditions of service pay and allowances, and discipline and conduct of the commissioners,

(b) to grant leave to, or to withdraw, any commissioner and appoint another in his place;

(c) to recover from the municipal council concerned the whole of such proportion of the salary and allowances paid to the commissioner and such contributions towards the leave allowances pension and provident fund of the commissioner as the State Governmect may by general or special order determine."

Functions of the several authorities.

[1][The chairman and the executive authority.]

Functions of the chairman.

[13. The chairman of the municipal council shall—

(a) make arrangements for the election of the vice-chairman;

(b) convene the meetings of the council; and

(c) perform all the duties and exercise all the powers specifically imposed or conferred on the chairman by this Act.]

Functions of the executive authority.

[1][13-A. The executive authority of the municipal council shall—

(a) carry into effect the resolutions of the council;

(b) furnish to the council such periodical reports regarding the progress made in carrying out the resolutions of that body in the collection of taxes as the council may direct; and

(c) perform all the duties and exercise all the powers specifically imposed or conferred on the executive authority by this Act and subject, whenever it is hereinafter expressly so provided, to the sanction of the council and subject to all other restrictions, limitations and conditions hereinafter imposed, exercise the executive power for the purpose of carrying out the provisions of this Act and be directly responsible for the due fulfilment of the purposes of this Act.]

LEG. REF.

1. Sections 13, 13-A and 13-B and the heading thereto were substituted for the original section 13 and the heading thereto by section 7 of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

Sec. 13.—The expression 'taking part in a ballot' in Rule IV of the Rules made under the Act includes presiding at the

Rights of chairman where a commissioner has been appointed.

[1][13-B. In the case of municipalities included in Schedule IX or notified under sub-section (1) of section 12-C the chairman shall have full access to all the records of the municipal council and no official correspondence between the council and the [2][(State) Government] shall be conducted except through the chairman. The chairman shall be bound to transmit communications addressed through him by the commissioner to the [2][(State) Government] or by the [2][(State) Government] to the commissioner.]

The chairman to be member of every committee of the council.

[3][14. The chairman shall by virtue of his office be a member of every committee of the council.]

LEG. REF.

1. Sections 13, 13-A and 13-B and the heading thereto were substituted for the original section 13 and the heading thereto by section 7 of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. These words were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937 and the word 'State' was substituted for the word 'Provincial' by A.L.O., 1950.

3. Sub-section (a) of the original section was omitted and sub-section (b) was renumbered as section 14 by section 13 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

---

meeting of councillors for the election of a municipal chairman conducting the ballot opening the box and counting votes. The expression is not confined to the mere act of voting. 44 M.L.J. 69=46 M. 123 =72 I.C. 902=1923 M. 254. A meeting of municipal council which has not been validly presided over is not a valid meeting. Disobedience of an order passed at that meeting is not punishable under the Act. 46 P.R. 1905 (Cr.)=134 P.L.R. 1905. A notice issued by the Vice-Chairman may become lawful, if Chairman's consent is obtained subsequently. 20 C. W.N. 824=24 C.L.J. 57=37 I.C. 515. The position of Councillors with regard to municipal fund is in law that of trustees. As trustees they would be bound to exercise over trust properties the same degree of caution and care as a man of ordinary prudence would exercise in case of his own property. They would be liable for any loss of the trust fund which was facilitated by the gross neglect of their own duties by their own acts or by any other agency. The president of a Municipal Committee appointed a tax-collector even though he had no authority to do so without taking any security from him; though many reports against such person were made by the secretary he did not take any steps and the Municipality was thereby put to loss by the embezzlement of the tax-collector. Held, that the President was guilty of acts of malfeasance and was liable to make good the loss. A.I.R. 1940 Rang. 8. By S. 12 the Commissioners become a legal entity which legal entity is not represented by the Chairman; although reference is made to the Chairman from time to time in the Act he is a person who apart from such reference is unknown to the law, is not a legal entity but is merely a person. If the Chairman is sued, the plaintiff is entitled to relief only against him. In no sense of the word can he be held to be the representative, for the purpose of the proceedings, of the Municipal Commissioners, and there is no justification on principle or on authority or under the Act itself to entitle a party to seek his relief against the Commissioners by bringing an action against the Chairman. It is not merely a mistake of form but it goes to the very root of the action. 182 I.C. 457=20 Pat.L.T. 613=A.I.R. 1939 Pat. 236. Although the position of a chairman of a Municipality is recognised by the Municipality Act he is not a legal entity nor a corporation sole and therefore he is not entitled to sue on behalf of the Municipality. The suit must be brought by the body of Commissioners under the Act. 181 I.C. 486=20 Pat.L. T. 563=A.I.R. 1939 Pat. 499. The fact that a suit is filed against the Chairman of the Municipality and not against the Municipal Commissioners is a technical flaw, and no importance should be attached to it if the commissioners duly appeared in Court and contested the suit. 68 C.L.J. 267=42 C.W.N. 768=1939 C. 178. Where the plaintiffs are stated in the plaint to be 'the Commissioners of the P. Municipality represented by the chairman Mr. B.', the designation of the plaintiffs in the plaint is in substantial compliance with the provisions of the Bengal Municipal Act. In any case, if the Court is inclined to be meticulous, an amendment ought to be allowed. 180 I.C. 673=43 C.W.N. 194 A.I.R. 1939 Cal. 79.

15. The [1][executive authority] may in cases of emergenly direct the execution of any work or the doing of any act which would ordinarily require the sanction of the council, and the immediate execution or doing of which is, in his opinion, necessary for the service or safety of the public and may direct that the expense of executing such work or doing such act shall be paid from the municipal fund:

Emergency powers of executive authority.

Provided that—

(a) he shall not act under this section in contravention of any order of the council prohibiting the execution of any particular act and

(b) he shall report the action taken under this section and the reasons therefor to the council at its next meeting.

Power of executive authority to incur petty contingent expenditure.

[16. The executive authority may, without the sanction of the council, incur petty contingent expenditure incidental to the municipal administration, not exceeding [2][fifty rupees] in each case:

Provided that—

(a) provision to meet the expenditure is available under the relevant head of account in the budget framed by the council with the modifications, if any, made therein by the (State) Government, and

(b) the executive authority shall report any expenditure incurred under this section and the reasons therefor to the council at its next meeting.] (Inserted by Madras Act XXXVIII of 1942, re-enacted permanently with modifications by Madras Act IX of 1948).

[3][17. (Omitted).]

[4][18. (1) The chairman may by an order in writing, delegate [5][any of his functions including his functions as executive authority if he is also the executive authority] to the vice-chairman:

Delegation and devolution of functions of chairman.

LEG. REF.

1. These words were substituted for the word 'chairman' by section 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. Substituted for 'Twenty-five rupees' by Madras Act IX of 1948.

3. This section was omitted by S. 15 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

4. This section was substituted for the original by section 18, ibid.

5. These words were substituted for the words 'any of his functions' by S. 17 (2) of Madras Act XV of 1933).

Sec. 15.—There is no distinction between the suspending execution of any resolution or order of a Committee and prohibiting the doing of an act. The Deputy Commissioner or the Commissioner can prohibit the doing of an act only if it has not been already done and can also suspend the execution of a resolution or order if that order has not been carried out. Where an order of the Committee in pursuance of a resolution passed by it has been carried out, it is not within the competence of the Deputy Commissioner or Commissioner to suspend its execution after it has been carried out and orders passed by them to that effect are ultra vires. A.I.R. 1939 Lah. 581.

Sec. 18.—The term 'Chairman' in S. 28 includes 'Chairman-Delegate' where the delegation under S. 32 is wide enough. 12 L.W. 427=1920 M.W.N. 648. When the chairman of a municipality delegated to a councillor, under S. 32, all the duties imposed on the chairman by the said Act with the exception of signing cheques and incurring expenditure, and the councillor instituted proceedings by a complaint in respect of an offence under the Act:

Held, that the complaint was legally instituted under S. 280 of the Act, and that there need not be any express authorisation to institute the particular proceeding. (Ibid.)

As to the powers of a municipal committee to delegate its powers to the President or other persons, see 32 P.R. 1881 (Cr.); 4 L. 120=74 I.C. 433=5 L.L.J.

Provided that he shall not delegate any functions which the municipal council expressly forbids him to delegate.

(2) If the chairman has been continuously absent from jurisdiction for more than fifteen days or is incapacitated, [1][his functions including where he is also the executive authority his functions as such except those of] promoting, withholding promotion from, reducing, removing or dismissing any municipal officer or servant, shall, during such absence or incapacity, devolve on the vice-chairman:

Provided that where the absence from jurisdiction of the chairman is within the Presidency of Madras and is on business connected with the municipality, the chairman's function shall not, except to the extent, if any, to which functions have been delegated by him under sub-section (1), devolve on the vice-chairman.

(3) If the vice-chairman also has been continuously absent from jurisdiction for more than fifteen days or is incapacitated or if the office of vice-chairman is vacant the chairman may by an order in writing, delegate [2][any of his functions including his functions as executive authority if he is also the executive authority] to any councillor who shall be styled 'chairman-delegate' during the period of delegation:

Provided that—

(i) when an order of delegation made under this sub-section is in force, no further order of delegation of any functions shall be made in favour of any other than the councillor in whose favour the order in force was made;

(ii) no delegation under this sub-section shall, without the special sanction of the council be made for any period exceeding in the aggregate [3][ninety days in any year]; and

---

LEG. REF.

1. These words were substituted for the words 'his functions except those of' by S. 17 (2) of the Madras District Municipalities (Amendment) Act (XV of 1933).

2. These words were substituted for the words 'any of his functions' by S. 17 (2) ibid.

3. These words were substituted for the words 'ninety days in any year in the case of an unpaid chairman and fifteen days in the case of a paid chairman' by S. 17 (2), ibid.

522=24 Cr.L.J. 769=1924 Lah. 80; 17 L. 35=158 I.C. 346=1935 Lah. 345. Committee delegating authority to public servant by virtue of his service—Such public servant acts in his capacity as public servant when making complaint and his personal attendance in Court for examination is not necessary. 1930 Nag. 33=25 N.L. R. 194=122 I.C. 258.

The power to seize articles of food or drink found to be unfit for human consumption which could be exercised by the Executive Officer of the Board can be delegated by him, with the sanction of the chairman, to any servant of the Board (e.g.) Medical Officer of Health. 158 I. C. 481=1935 O.W.N. 1124=1936 O. 20.

A municipality constituted under the Bombay City Municipalities Act did not appoint a Standing Committee but passed a rule to the following effect: 'all powers or duties or executive functions to be exercised or performed on behalf of the municipality except those which are reserved to the Municipality itself by the Act......are delegated to the President.' The Government of Bombay sanctioned the said rule and subsequently the Chief Officer prepared a revised assessment list of the houses within its limits. Held, that the rule delegating powers to the President was ultra vires and that he could not hear objections to the assessment preferred by the owners. 57 Bom. 270=35 Bom. L.R. 138=1933 Bom. 175. As to delegation of powers, see also 1932 Sind 177.

(iii) every order made under this sub-section shall be communicated forthwith to the Council and to the District Collector.

(4) Subject to any restrictions that the council may impose [1][the chairman may where he is also the executive authority, by order in writing] delegate any of his executive functions to any officer or servant of the council or to any [2][servant of the (Government).]

(5) The exercise or discharge of any functions delegated under sub-sections (1), (3) and (4) shall be subject to such restrictions, limitations and conditions if any as may be laid down by the chairman and shall also be subject to his control and revision. The chairman shall also have power to control and revise the exercise or discharge of any functions devolving on the vice-chairman under sub-section (2).]

Rights and duties of the commissioner.

[3][18-A. (1) (a) The commissioner shall have the right to attend the meetings of the council or any committee thereof and take part in the discussions thereat but shall not have the right to move any resolution or to vote.

(b) He shall attend any meeting of the council or of any committee if required to do so by the chairman.

(2) In the case of municipalities included in Schedule IX or notified under sub-section (1) of section 12-C the officers and servants of the municipal council shall be subordinate to the commissioner.

(3) Subject to any directions given or restrictions imposed by the [4][State Government] or the municipal council, the commissioner may by order in writing delegate any of his functions to any officer or servant of the council or to any [2][servant of the (Government)]. The exercise or discharge of any functions so delegated shall be subject to such restrictions, limitations and conditions as may be laid down by the commissioner and shall also be subject to his control and revision.]

THE COUNCIL.

Functions of the council.

19. Subject to the provisions of this Act the municipal administration shall vest in the council but the council shall not be entitled to exercise functions expressly assigned by or under this Act or any other law to the [5][chairman or executive authority].

LEG. REF.

1. These words were substituted for the words 'the chairman may by an order in writing' by S. 17 (2) of the Madras District Municipalities Act (XV of 1933).

2. The words 'servant of the Crown' were substituted for the words 'officer of Government' by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937, and the word 'Government' was substituted for 'Crown' by A.L.O., 1950.

3. S. 18-A inserted by Madras Act XV of 1933.

4. The words 'Provincial Government' were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word 'State' was substituted for 'Provincial' by A.L.O., 1950.

5. These words were substituted for the word 'chairman' by S. 17 (2) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

Sec. 19.—The Governor-in-Council can remove a councillor, if his continuance in office is likely to bring the municipal administration into contempt, but an opportunity for explanation should be given to the councillor. 1910 M.W.N. 271=6 I. C. 604.

The Court will not interfere with the operations of a municipal council if they are within its authorisation and the council acts bona fide. It is the best judge not only of what is most conducive to its own interest but also of what is proper and fitting as regards third parties and it will be left unchecked to take or not to

Duties and powers of individual councillors.

20. (1) Any councillor may call the attention of the [1][executive authority] to any neglect in the execution of municipal work to any waste of municipal property, or to the wants of any locality and may suggest any improvements which may appear desirable.

(2) Every councillor shall have the right to move resolutions [2][and] to interpellate the chairman on matters connected with the municipal administration subject to such regulations as may be framed by the council.

(3) Every councillor shall have access during office hours to the records of the council after giving due notice to the [1][executive authority] provided that the [1][executive authority] may for reasons given in writing forbid such access.

Council's power to call for records.

21. The council may at any time require the [1][executive authority] to produce any [3][. . . . .] document which is in his custody.

The [1][executive authority] shall comply with every such requisition unless in his opinion immediate compliance therewith would be prejudicial to the interests of the council or of the public in which case he shall make a declaration in writing to that effect and shall if required by the council, refer the question to the District Collector, whose decision shall be final.

Obligation of the executive authority to carry out council's resolutions.

22. The [1][executive authority] shall be bound to give effect to every resolution of the council unless such resolution is modified, suspended or cancelled by a controlling authority.

Appointment of committees.

[4][23. A council may constitute committees for the purpose of exercising such powers discharging such duties or performing such functions as it may delegate to them; or may appoint individual councillors or committees, to enquire into and report or advise on any matters which it may refer to them.]

Appointment of special committees.

24. It shall be lawful for the council from time to time by a resolution supported by not less than one-half of the sanctioned strength of the council to appoint as members of any committee any persons [5][. . . .] who are not councillors but who may in the opinion of such council possess special qualifications for serving on such committee. But the number of

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the District Municipalities (Amendment) Act (XV of 1933).

2. This word was inserted by S. 17 of the Madras District Municipalities (Amendment) Act (X of 1930).

3. The words 'record plan, correspondence or other' were omitted by S. 18, ibid.

4. This section was substituted for the original section by S. 19 of ibid.

5. The words 'of either sex' omitted by S. 20 (i), ibid.

---

take lands for promoting sanitation. 35 M.L.J. 251=48 I.C. 128.

Sec. 23.—Standing Committee of the Corporation can only deal with such matters as have been delegated to them by the Corporation. They cannot deal with any matter which has not been properly delegated to them. I.L.R. (1937) 2 Cal. 397=A.I.R. 1937 Cal. 603.

Decisions and actions of the committee to which the council has delegated its powers, duties and functions in any behalf under S. 23 are binding on the council. In the absence of anything to show that the council has exceeded its powers in making a delegation, such a delegation must be presumed to have been validly made. 64 L.W. 729=(1951) 1 M.L.J. 453=1952 Mad. 608.

persons so appointed on any committee shall not exceed one-third of the total number of members of such committee. All the provisions of this Act relating to the duties, powers, liabilities, and disqualifications and disabilities of councillors shall, save as regards the disqualification on the ground of [1][residence], be applicable, so far as may be, to such persons.

Rules and regulations for proceedings of council.

25. The council shall observe the rules in Schedule III and may make [2][. . . . .] regulations not inconsistent therewith or with other provisions of this Act or any rules made by the [3][State Government] in regard to the following matters:—

(a) the time and place of its meetings;

(b) the manner in which notice thereof shall be given;

[4][(c) the preservation of order and the conduct of proceedings at meetings and the powers which the chairman may exercise for the purpose of enforcing his decisions on points of order;]

(d) the division of duties among the members of the council;

[5][(e) the constitution and procedure of committees;]

[6][(f) the delegation of its powers, duties or functions—

(i) to the chairman a councillor, an officer or servant of the council or [7][a servant of the Government]; or

(ii) to a committee constituted under clause (e) or to its chairman or to any one or more of its members;]

[8][(g)] the persons by whom receipts may be granted for money paid to the council: and

[8][(h)] all other similar matters.

LEG. REF.

1. This word was substituted for the word 'sex' by S. 20 (ii) of the Madras District Municipalities (Amendment) Act (X of 1930).

2. The word 'supplementary' was omitted by S. 21 (i) ibid.

3. These words were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937. The word 'State' was substituted for the word 'Provincial' by A.L.O., 1950.

4. This clause was substituted for the original by S. 21 (ii) of the Madras District Municipalities (Amendment) Act, (X of 1930).

5. This clause was substituted for the original by S. 21 (iii), ibid.

6. This was inserted as Cl. (f) by S. 21 (iv), ibid.

7. These words were substituted for the words 'an officer of Government' by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937, the word 'Government' was substituted for 'Crown' by A.L.O., 1950.

8. The original Cls. (f) and (g) were re-lettered as Cls. (g) and (h) by S. 21 (iv) of the Madras District Municipalities (Amendment) Act (X of 1930).

All that the Act provides is that the objections should be heard by a Committee consisting of not less than a specified number of Commissioners. It may be a domestic or internal arrangement of the municipality in assigning cases of one Ward to one Committee and another Ward to another Committee. But it is purely domestic and in no way affects the jurisdiction. There is nothing in the Act to prevent the Municipal Commissioners from arranging their business in whatever way they desire so long as they comply with the provisions of the Act, and the fact that the objections regarding cases of one Ward were heard by the Committee which was directed to hear cases regarding different Wards does not go to the root of the jurisdiction. 182 I.C. 457=20 Pat. L.T. 613=A.I.R. 1939 Pat. 236.

Appointment of joint committee.

[1][26. (1) A council may, and if so required by the [2][State Government] shall, join with one, or more than one, other local authority in constituting a joint committee for any purpose in which they are jointly interested or for any matter for which they are jointly responsible.

(2) A joint committee may include persons who are not members of the local authorities concerned but who may in their opinion possess special qualifications or special interest for serving on such committee:

Provided that the number of such persons shall not exceed one-third of the total number of members of the joint committee.

(3) The constitution of a joint committee shall be by means of regulations which shall not, except in the cases referred to in sub-sections (6) and (7), have effect unless assented to by each of the local authorities concerned.

(4) The regulations shall determine—

(a) the total number of members of the joint committee;

(b) the number who shall be members of the local authorities concerned and the number who may be outsiders;

(c) the persons who shall be members of the joint committee or the manner in which they shall be elected or appointed;

(d) the person who shall be chairman of the joint committee or the manner in which he shall be elected or appointed;

(e) the term of office of members and chairman;

(f) the powers, being powers exercisable by one or more of the local authorities concerned, which may be exercised by the joint committee; and

(g) the procedure of the joint committee.

(5) Regulations made under sub-sections (3) and (4) may be varied or revoked provided that all the local authorities concerned assent to such variation or revocation.

(6) If the [2][State Government] take action under sub-section (1), they may issue such directions as they think necessary or desirable in respect of all or any of the matters referred to in sub-sections (3) and (4).

(7) If any difference of opinion arises between local authorities under any of the foregoing provisions of this section, it shall be referred to the [2][State Government] whose decision shall be final.]

[3][(8) The powers of the [2][State Government] under this section shall, where one of the local authorities concerned is a cantonment authority or the port authority of a major port, only be exercisable with the concurrence of the Central Government.]

LEG. REF.

1. This section was substituted for the original section by S. 22 of the Madras District Municipalities (Amendment) Act (X of 1930).

2. These words were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and the word 'State' was substituted for the word 'Provincial' by A.L.O., 1950.

3. This sub-section was inserted by the Second Schedule of Madras Act X of 1930.

Notification of election and appointment.

27. All elections [1][. . . .] of chairman vice-chairman and members of municipal councils shall be notified in the [2][Official Gazette].

Presidency of council.

28. [3][(1) Every meeting of the council shall be presided over by the chairman; in his absence by the vice-chairman; and in the absence of both chairman and the vice-chairman, by a councillor chosen by the meeting to preside for the occasion.]

(2) The chairman shall preserve order and shall decide all points of order arising at or in connexion with meetings. There shall be no discussion on any point of order and the decision of the chairman on any point of order shall, save as is otherwise expressly provided in this Act, be final.

(3) A vice-chairman or councillor presiding for the occasion shall, for that meeting, [4][and during the period that he presides over it], have all the powers of the chairman.

[5][29. (Omitted)].

Councillor when to abstain from taking part in discussion and voting.

30. (1) No councillor shall vote on, or take part in, the discussion of any question coming up for consideration at a meeting of the council or any committee, if the question is one in which, apart from its general application to the public, he has any direct or indirect pecuniary interest by himself or his partner.

(2) The chairman may prohibit any councillor from voting or taking part in the discussion of any matter in which he believes [6][such councillor] to have such interest or he may require [6][such councillor] to absent himself during the discussion.

(3) [6][Such councillor] may challenge the decision of the chairman, who shall thereupon put the question to the meeting. The decision of the meeting shall be final.

(4) If the chairman is believed by any councillor present at the meeting to have any such pecuniary interest in any matter under discussion,

---

LEG. REF.

1. The words 'and appointments' were omitted by S. 23 of the Madras District Municipalities (Amendment) Act (X of 1930).

2. These words were substituted for the words 'Fort St. George Gazette' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

3. This sub-section was substituted for the original by S. 24 (i) of the Madras District Municipalities (Amendment) Act, (X of 1930).

4. These words were inserted by S. 24 (ii), ibid.

5. This section was omitted by S. 25, ibid.

6. These words were substituted for the words 'such person' by S. 26 (i) ibid.

Sec. 28.—The term 'Chairman' includes 'Chairman-Delegate' where the delegation under the Act is wide enough. 12 L.W. 427=1920 M. W. N. 648. The word 'Chairman' in S. 28, includes 'Chairman-delegate' in cases where there is no vice-chairman. A chairman seeking re-election is incompetent to preside at a meeting of the council for election of a chairman, and where there is no vice-chairman he should appoint chairman-delegate who under S. 28 of the Act would preside at the meeting. Where instead of so doing the chairman himself presided, it is clear breach of the election rules. But the election will not be invalid on that ground unless the result has been materially affected by the breach of the rules. 1923 M. 254=44 M. L.J. 69=46 M. 123=72 I.C. 902. Where therefore the lower Court set aside an election of a chairman though he was himself seeking re-election without finding whether the illegality affected the result of the election, the High Court remanded the case for such enquiry and decision. In dealing with an election enquiry a Subordinate Judge is a Court subordinate to the High Court under S. 115, C.P. Code. 44 M. L.J. 69=46 M. 123=16 L.W. 848.

he may, if a motion to that effect be carried, be required to absent himself from the meeting during such discussion.

[1][(5) The councillor concerled shall not be entitled to vote on the question referred to in sub-section (3), and the chairman concerned shall not be entitled to vote on the motion referred to in sub-section (4).]

Explanation.—'Chairman' in this section includes a vice-chairman, or councillor, presiding for the occasion.

Power of chairman, vice-chairman or councillor to resign.

31. Any councillor other than the chairman [2][and any vice-chairman] may resign his office by giving notice to the chairman; the chairman may resign by giving notice to the council. [3][Such resignation shall take effect in the case of a councillor or vice-chairman from the date on which it is received by the chairman and in the case of a chairman from the date on which it is placed before the council.]

Acts of municipal council, etc., not to be invalidated by informality, etc.

[4][32. No act of a municipal council or of a committee thereof or of any person acting as chairman, vice-chairman or member of the municipal council or committee shall be deemed to be invalid by reason only of a defect in the establishment of the municipality or committee or on the ground that the chairman, vice-chairman or any member of the council or committee was not entitled to hold or continue in such office by reason of any disqualification or by reason of any irregularity or illegality in his election or appointment or by reason of such act having been done during the period of any vacancy in the office of chairman, vice-chairman or member of the council or committee.]

Administration report.

Annual administration report.

33. (1) As soon as may be after the first day of April in every year, and not later than such date as may be fixed by the [5][State Government] the municipal council shall submit to the [5][State Government] through the District Collector a report on the administration during the preceding year in such form and with such details as the [5][State Government] may direct. If the District Collector makes any remarks on the report, such remarks shall be forwarded to the council and the council shall be entitled within such time as the [5][State Government] [6][fix], to offer or make such explanations or observations as the council thinks fit.

LEG. REF.

1. This sub-section was inserted by S. 26 (ii) of the Madras District Municipalities (Amendment) Act (X of 1930).
2. These words were inserted by S. 27 (i) ibid.
3. This sentence was added by S. 27 (ii) ibid.
4. This section was substituted for the original section by S. 28, ibid.
5. These words were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; the word 'State' was substituted for the word 'Provincial' by A.L.O., 1950.
6. This word was substituted for the word 'fixes' by the Schedule to the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

Sec. 32.—See 160 I.C. 942=38 P.L.R. 83=1936 L. 572 (jurisdiction of Civil Court to give relief to a party when the order of the Municipality is found to be ultra vires, arbitrary or oppressive). Non-conformity with rules and regulations—Effect on special meeting and resolutions passed thereat—If null and void. See I.L.R. (1937) All. 434=1937 A.W.R. 88 =A.I.R. 1937 All. 264.

(2) The [1][executive authority] shall prepare the report; the municipal council shall consider his report and forward it to the [2][State Government] with its resolutions thereon, if any.

(3) The report [3][and the resolutions thereon, if any], shall be published in such manner as the council, subject to the approval of the [2][State Government] may direct.

Controlling authorities.

Power of (State) Government and collector for purposes of control.

34. (1) The District Collector may enter on and inspect, or cause to be entered on and inspected, any immovable property or any work in progress under the control of any municipal authority in his district.

(2) The [2][State Government] or the District Collector may—

(a) call for any [4][. . .] document in the possession or under the control of any [5][council or [1](executive authority)];

(b) require any council [6][or [1](executive authority)] to furnish any return, plan, estimate, statement, account, or statistics;

(c) require any council [7][or [1](executive authority)] to furnish [8][any] information or report on any municipal matter;

(d) record in writing, for the consideration of the council [9][or [1](executive authority)] any observations [10][they or he may] think proper in regard to its [11][or his] proceedings or duties.

Collector's power to enforce execution of resolutions.

35. If it appears to the District Collector that the [1][executive authority] of a municipality has made default in carrying out any resolution of the council, the said Collector, after giving the [1][executive authority] a reasonable opportunity of explanation, shall send a report thereon together with the explanation, if any, of the [1][executive authority] to the [2][State Government] and at the same time forward a copy of the same to the council.

Power to suspend or cancel resolutions, etc., under Act.

[12][36. (1) The [2][State Government] may, by order in writing—

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act (XV of 1933).

2. Vide footnote 5, page 39.

3. These words were inserted by S. 29 of the Madras District Municipalities (Amendment) Act (X of 1930).

4. The words 'records, correspondence, plan or other' in the original clause were omitted by S. 30 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

5. The words 'council or chairman' were substituted for the words 'municipal council' by S. 30 (i) ibid.

6. The words 'or chairman' were inserted by S. 30 (ii) ibid.

7. The words 'or chairman' were inserted by S. 30 (iii) of ibid.

8. The word 'any' was inserted by S. 30 (iii), ibid.

9. The words 'or chairman' were inserted by S. 30 (iv) (a) of ibid.

10. These words were substituted for the words 'he may' by S. 30 (iv) (b) ibid.

11. These words were inserted by S. 30 (iv) (c) of ibid.

12. This section was substituted for the original by S. 31 of ibid.

Sec. 34.—The Collector of the district acting under rules made under the Act is not a 'Court'. 10 Cr.L.J. 9=2 I.C. 426. On this section; see also 31 N.L.R. 1 =154 I.C. 311=1935 Nag. 5.

Secs. 36 and 59.—Order issued in name of Governor cancelling permission order under S. 36—High Court, if can issue writ of certiorari. See 1939 Mad. 940=

(i) suspend or cancel any resolution passed, order issued, or licence or permission granted or

(ii) prohibit the doing of any act which is about to be done or is being done

in pursuance or under colour of this Act, if, in their opinion,

(a) such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorized or

(b) such resolution, order, licence, permission or act is in excess of the powers conferred by this Act or any other law or

(c) the execution of such resolution or order, the continuance in force of such licence or permission or the doing of such act is likely to cause danger to human life, health or safety, or is likely to lead to a riot or an affray:

Provided that the [1][State Government] shall before taking action under this section on any of the grounds referred to in clauses (a) and (b) give the authority or person concerned an opportunity for explanation:

[Provided further that nothing in this sub-section shall enable the *(State) Government to set aside any election which has been held.] (Added by Madras Act XXXVIII of 1942, re-enacted permanently with modifications by Madras Act IX of 1948).

(2) If, in the opinion of the district collector, immediate action is necessary on any of the grounds referred to in clause (c) of sub-section (1) he may suspend the resolution, order, licence, permission or act, as the case may be, and report to the [1][State Government] who may thereupon either rescind the collector's order or after giving the authority or person concerned a reasonable opportunity of explanation, direct that it continue in force with or without modification permanently or for such period as they think fit.]

Emergency power of collectors.

37. (1) The district collector may, in cases of emergency, direct or provide for the execution of any work, or the doing of any act which the council or [2][executive authority] is empowered to execute or to do, and the immediate execution or the doing of which is, in his opinion, necessary for the safety of the public, and may direct that the expense of executing such work or doing such act incurred as the emergency may require shall be paid from the municipal fund.

(2) If the expense is not so paid, such collector may make an order directing the person having the custody of the municipal fund to pay it in priority to any other charge against the fund.

(3) Such person shall, so far as the funds to the credit of the municipal council admit, be found to comply with such order.

(4) Every case in which the powers conferred by this section are exercised shall be forthwith reported to the [1][State Government] by the

---

LEG. REF.

*Substituted by A.L.O., 1950.

1. These words were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; the word 'State' was substituted for the word 'Provincial' by A.L.O., 1950.

2. Vide footnote 4 on page 32.

(1939) 2 M.L.J. 801=I.L.R. (1940) Mad. 204=50 L.W. 538. It has been held in this case that where an order is issued in the name of the Governor cancelling a previous order of the Government under S. 36, the High Court has no power to interfere within by issuing a writ of certiorari because the order in question is an execution order lawfully passed and lawfully issued in the name of the Governor. The order is within the limits of authority and it cannot be said that the Government has no power to cancel or vary its own executive order.

District Collector with the reasons in full for the exercise of such powers, and a copy of the letter shall at the same time be sent to the municipal council for information.

(State) Government's power to appoint officers to supervise municipalities.

38. (1) The [1][State Government] may appoint such officers as may be required for the purpose of inspecting or superintending the operations of all or any of the municipal councils established under this Act.

(2) All schools, hospitals, dispensaries, vaccine stations, choultries and other institutions maintained by any municipal council, and all [2][. . .] documents relating thereto shall at all times be open to the inspection of such officers as the [1][State Government] may appoint in that behalf.

(3) Municipal authorities and municipal officers and servants shall be bound to afford to inspecting or superintending officers [3][. . . .] appointed under this section such access at all reasonable times to municipal property or premises, and to all [4][. . .] documents which, subject to any rules framed for their guidance under section 303 (1) and (2) (k), they may consider to be necessary to enable them to discharge their duties of inspection or superintendence.

Control over municipal electrical undertakings.

[5][38-A. The administration by a municipal council of any undertaking for the generation, transmission, supply or use of electrical energy shall be subject to such control as may be prescribed, not inconsistent with the Indian Electricity Act, 1910, as in force for the time being, the rules made under that Act, and the terms of the licence granted under it to the municipal council.]

(State) Government's power to undertake works for, or to take action in default of, a municipality.

39. (1) If at any time it appears to the [6][State Government] that a municipal council [7][chairman or executive authority] has made default in performing any duty imposed by or under this or any other Act, [8][they may], by order in writing, fix a period for the performance of such duty.

(2) If such duty is not performed within the period so fixed the [6][State Government] may appoint some person to perform it, and may direct that the expense of performing it shall be paid, within such time [9][as they may fix,] to such person by the municipal council.

LEG. REF.

1. Vide footnote 1 at page 41.
2. The words 'registers, books, accounts and other' were omitted by S. 32 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).
3. The words 'of Government' were omitted by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.
4. The words 'records, accounts and other' were omitted by S. 32 (ii) of the Madras District Municipalities (Amendment) Act 1930 (Madras Act X of 1930).
5. This section was inserted by S. 2 (i) of the Madras District Municipalities and Local Boards (Amendment) Act, 1938 (Madras Act XVIII of 1938).
6. These words were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order), 1937.
7. These words were substituted for the words 'or chairman' by section 17 (2) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).
8. These words were substituted for the words 'he may' by the Schedule to the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).
9. These words were substituted for the words 'as he may fix' by the Schedule to the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

(3) The [1][State Government] may, with the consent of the municipal council, undertake on its behalf the construction of water supply, drainage or other works, appoint persons to carry out the construction of such works, and direct that the expense, including the pay of such persons be paid from the municipal fund.

(4) If expenses which the [1][State Government] [2][have directed] under sub-section (2) or (3) to be paid from the municipal fund are not so paid, the district collector, with the previous sanction of the [1][State Government] may make an order directing the person having the custody of the municipal fund to pay it in priority to any other charge against such fund except charges for the service of authorized loans.

(5) Such person shall, so far as the funds to the credit of the municipal council admit, be bound to comply with such order.

(State) Government to remove chairman or vice-chairman.

[3][40. (1) The [1][State Government] may, by notification, remove any chairman or vice-chairman, who in their opinion wilfully omits or refuses to carry out or disobeys the provisions of this Act or any rules, by-laws, regulations or lawful orders issued thereunder or abuses the powers vested in him.

(2) The [1][State Government] shall, when they propose to take action under sub-section (1), give the chairman or vice-chairman concerned an opportunity for explanation, and the notification issued under the said sub-section shall contain a statement of the reasons of the [1][State Government] for the action taken.

[4][(3) Any person removed under sub-section (1) from the office of chairman or from the office of vice-chairman shall not be eligible for election to either of the said offices until the date on which notice of the next ordinary elections to the municipal council is published in the prescribed manner, or the expiry of six months from the date of the removal whichever is earlier.]

Motion of no-confidence in chairman or vice-chairman.

[5][40-A. (1) Subject to the provisions of this section, a motion expressing want of confidence in the chairman or in the vice-chairman may be made in accordance with the procedure laid down herein.

(2) Written notice of intention to make the motion, in such form as may be fixed by the [6][State Government], signed by such number of councillors as shall constitute not less than one-half of the sanctioned strength of the council, together with a copy of the motion which is proposed to be made, shall be delivered by any two of the councillors signing the notice in person together, to the Revenue Divisional Officer.

LEG. REF.

1. These words were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India Adaptation of Indian Laws Order, 1937.

2. These words were substituted for the words 'has directed' by the Schedule to the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. Sections 40 and 40-A were substituted for the original section 40 by section 33 ibid.

4. Section 40, sub-cl. (3) added by Madras Act XI of 1939.

5. Section 40-A was substituted for the original section 40-A by section 2 of the Madras District Municipalities (Second Amendment) Act, 1933 (Madras Act IV of 1933).

6. These words were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; the words 'State' was substituted for the word 'Provincial' by A.L.O., 1950.

Sec. 40.—As to removal of Municipal councillors for misconduct, see 1932 Sind 177.

(3) The Revenue Divisional Officer shall then convene a meeting for the consideration of the motion, to be held at the municipal office, at a time appointed by him which shall not be later than thirty lays from the date on which the notice under sub-section (2) was delivered to him. He shall give to the councillors notice of not less than fifteen clear days of such meeting and of the time appointed therefor.

(4) The Revenue Divisional Officer shall preside at the meeting convened under this section, and no other person shall preside thereat. If within half an hour after the time appointed for the meeting the Revenue Divisional Officer is not present to preside at the meeting, the meeting shall stand adjourned to a time to be appointed and notified to the councillors by the Revenue Divisional Officer under sub-section (5).

(5) If the Revenue Divisional Officer is unable to preside at the meeting, he may, after recording his reasons in writing, adjourn the meeting to such other time as he may appoint. The date so appointed shall not be later than thirty days from the date appointed for the meeting under sub-section (3). Notice of not less than seven clear days shall be given to the councillors of the time appointeed for the adjourned meeting.

(6) Save as provided in sub-sections (4) and (5), a meeting convened for the purpose of considering a motion under this section, shall not for any reason be adjourned.

(7) As soon as the meeting convened under this section has commenced, the Revenue Divisional Officer shall read to the council the motion for the consideration of which it has been convened, and declare it to be open for debate.

(8) No debate on any motion under this section shall be adjourned.

(9) Such debate shall automatically terminate on the expiry of two hours from the time appointed for the commencement of the meeting, if it is not concluded earlier. Upon the conclusion of the debate or upon the expiry of the said period of two hours, as the case may be, the motion shall be put to the vote of the council.

(10) The Revenue Divisional Officer shall not speak on the merits of the motion, nor shall he be entitled to vote thereon.

(11) A copy of the minutes of the meeting together with a copy of the motion and the result of the voting thereon shall forthwith on the termination of the meeting be forwarded by the Revenue Divisional Officer to the [1][State Government].

LEG. REF.

1. These words were substituted for the the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and word 'State' was substituted for the word 'Provincial' by A.L.O., 1950.

Sec. 40 (1).—Powers of Government—power of Court to interfere with decision of Government under S. 40 (1) it is the opinion of the State Government that is decisive of the question whether a chairman or a vice-chairman is or is not guilty of any of the charges levelled against him. It is not the province of the Courts to record its opinion on the matter. Unless the Chairman or vice-Chairman who has been removed is able to convince the High Court that the Government have not formed an opinion on materials placed before them or that they formed an opinion on materials entirely irrelevant to the charges levelled against him or that the Government acted fraudulently in exercise of their powers under the section, the High Court cannot quash the order removing him. 64 L.W. 305=(1951) 1 M.L.J. 423=1951 Mad. 208.

Sec.. 40-A (5): 'Unable to preside'—Meaning of.—The words 'unable to preside at the meeting in S. 40-A (5) would cover a case where the Revenue Divisional Officer is prevented from holding the meeting by a prohibitory injunction or order issued by a Court. The words are quite general. See 1956 An.W.R. 627.

(12) If the motion is carried with the support of not less than three-fifths of the sanctioned strength of the council, the [1][State Government] shall, by notification, remove the chairman or vice-chairman as the case may be.

(13) If the motion is not carried by such a majority as aforesaid, or if the meeting cannot be held for want of a quorum, no notice of any subsequent motion expressing want of confidence in the same chairman or vice-chairman shall be received until after the expiry of six months from the date of the meeting.

(14) No notice of a motion under this section shall be received within six months of the assumption of office by a chairman or vice-chairman as the case, may be].]

Provincial Government's power to dissolve or supersede council.

41. (1) If in [2][their opinion] a council is not competent to perform or persistently makes default in performing the duties imposed on it by law, or exceeds or abuses its powers the [1][State Government] may by notification direct that the council be [3][dissolved and reconstituted on such dates as the [1][State Government] may fix in that behalf] or [4][they may, if they think] necessary, supersede the council for a specified period not exceeding two years and the notification shall be laid [5][before both *(Houses) of the (State)† Legislature]:

Provided as follows:—

[6][(a) for the purpose of completing the elections to a council which has been dissolved the [1][State Government] may, [7][. . . .] from time to time, extend the time fixed by them under this sub-section for its reconstitution;]

LEG. REF.

1. These words were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and the word 'State' for the word 'Provincial' by A.L.O., 1950.

2. These words were substituted for the words 'his opinion' by the Second Schedule to the Madras Repealing and Amending Act, 1938 (Madras Act XIII of 1938).

3. These words were substituted for the words 'dissolved and reconstituted immediately' by section 34 (1) (a) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

4. These words were substituted for the words 'he may if he thinks' by the Second Schedule to the Madras Repealing and Amending Act, 1938 (Madras Act XIII of 1938).

5. These words were substituted for the words 'on the table of the Legislative Council' by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

*Substituted for the word 'Chambers' by A.L.O., 1950.

†Substituted for the word 'Provincial' by ibid.

6. This proviso was substituted for the original proviso (a) by section 34 (i) (b) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

7. The words 'in their discretion' were omitted by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

Sec. 41.—Whether a Municipal Committee superseded by the Local Government under S. 238 (1) of the Punjab Municipal Act is by the Act of supersession annihiliated or remains dormant during the period of supersession, there is no warrant for applying as a limit fixed for the period of supersession the limit fixed by the Act for the term of office of the members of the Committee; the period of supersession continues until the Local Government takes the appropriate steps to terminate it by constituting another Committee. Consequently an administrator appointed by the Local Government under S. 238 (2) (b) of the Act to exercise the powers of the superseded Committee does not become functus officio on the date on which the members of that Committee would have ceased to hold office, if the Committee had not been superseded. 184 I.C. 237=41 P.L.R. 504=A.I.R. 1939

(b) the [1][State Government] shall not supersede a portion only of the municipal council.

[2][(1-A) Before publishing a notification under sub-section (1) the [1][State Government] shall communicate to the council concerned the grounds on which they propose to do so, fix a reasonable period for the council to show cause against the proposal and consider its explanations or objections, if any:

Provided that where a council has disobeyed an order issued under section 36 the [1][State Government] shall not be bound to follow the procedure laid down in this sub-section.]

[3][(2) On the date fixed for the dissolution of the council under sub-section (1), all its members as well as its chairman and vice-chairman shall forthwith be deemed to have vacated their offices and fresh elections shall be held in accordance with the provisions of this Act. The newly elected councillors shall enter upon their offices on the date fixed for the reconstitution of the council.]

(3) Supersession shall take effect from noon on the date of publication of the notification if no date is therein specified, and thereupon the following consequences shall ensue:—

(a) All the members of the council as well as [4][its chairman and vice-chairman shall forthwith be deemed to have vacated their offices].

(b) All or any of the [5][functions of the council and of its chairman, including where the chairman is also the executive authority, his functions as such] may, during the period of supersession be exercised and performed, as far as may be and to extent as the [1][State Government] may determine by such persons as the [1][State Government] [6][appoint] in that behalf and any such person who is not a district collector or revenue divisional officer may, if the [1][State Government] [7][so direct], receive payment for his services from the municipal fund; the [1][State Government] may determine the relations of such person with the municipal secretary (if any),

---

LEG. REF.

1. Vide footnote 1 at page 45.
2. This sub-section was inserted by section 34 (ii) of the Madras District Municipalities (Amendment Act, 1930 (Madras Act X of 1930).
3. This sub-section was substituted for the original by S. 34 (iii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).
4. These words were substituted for the words 'the chairman and vice-chairman shall forthwith vacate their office' by S. 34 (iv) (a) ibid.
5. These words were substituted for the words 'powers and duties of the municipal authorities' by S. 17 (2) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).
6. This word was substituted for the word 'appoints' by the Schedule to the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).
7. These were substituted for the words 'so directs' by the Schedule Ibid.

Lah. 369=I.L.R. (1940) L. 14 (F.B.). An administrator appointed by the Provincial Government under S. 238 (2) (b) of the Punjab Municipal Act to exercise the powers and duties of a superseded Municipal Committee, can legally exercise any power which might have been exercised by that Committee before it was superseded, including the power to impose a new tax. The words 'all powers' in the section must be taken to mean all powers without distinction or restriction. 1939 Lah. 369=I.L.R. (1940) L. 14 (F.B.). As to sufficiency of consultation with commissioner who is performing the function. See (1958) 1 An.W.R. 480.

Sec. 41 (3): Effect of supersession.— The legal effect of supersession of a Municipal Council under S. 41 (3) and appointing a special officer is to authorise him to exercise the powers, discharge the duties and perform the functions of the Council and its Chairman. I.L.R. (1958) Andhra Pradesh 466=(1958) 1 An. W. R. 480= A.I.R. 1958 Andhra Pradesh 458.

with the district controlling officers and [1][with themselves] and where there is a [2][commissioner] the [3][State Government] may direct him to exercise and perform any powers and duties of the council in addition to his own.

[4][(c) Omitted.]

(4) On or before the expiry of the period of supersession notified under sub-section (1), the [3][State Government] may, by notification, for reasons to be stated in the notification, postpone the reconstitution of the council for a further period not exceeding six months, or notwithstanding anything contained in [5][proviso (a) to sub-section (1) of section 5] withdraw the area of the municipality from the operation of this Act under that section.

(5) The [3][State Government] may reconstitute the council before the expiry of the period notified under sub-section (1) [6][or sub-section (4)].

[7][(6) When a council is dissolved or superseded under this section the [8][State Government] until the date of the reconstitution thereof and the reconstituted council thereafter shall be entitled to all the assets and be subject to all the liabilities of the council as on the date of the dissolution or supersession and on the date of the reconstitution respectively.]

Powers of officer acting for, or in default of, municipal council and liability of municipal fund.

42. When the district collector or person appointed by the [3][State Government] lawfully takes action on behalf or in default of the municipal council under this Act he shall have [8][all such powers] as are necessary for the purpose and shall be entitled to the same protection under this Act as the municipal authority whose powers he is exercising and compensation shall be recoverable from the municipal fund by any person suffering damage from the exercise of such powers to the same extent as if the action had been taken by such municipal authority.

LEG. REF.

1. These words were substituted for the words 'with himself' by the Schedule to Madras Act X of 1930.

2. This word was substituted for the words 'paid chairman' by S. 17 (2) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

3. The words 'Provincial Government' were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and the word 'State' was substituted by A.L.O., for the word 'Provincial'.

4. This clause was omitted by S. 34 (iv) (b) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

5. These words and figures were substituted for the words and figures 'proviso (a) to S. 5, sub-section (1) by S. 34 (v) ibid.

6. These words and figure were added by S. 34 (vi) ibid.

7. This sub-section was added by S. 34 (vii) ibid.

8. These words substituted for the words 'power to make such contracts' by S. 35 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

Chapter IV: Election, matters relating to Jurisdiction of Civil Courts.—A suit for declaration, that the plaintiff's election as a Commissioner of the Municipality is valid, is one of a civil nature, cognisable by the Civil Courts. 37 C.W.N. 122=60 C. 488=1933 C. 443. Orders passed by the Revising Committee or the District Magistrate under the election rules framed by the Local Government are final and cannot be impugned in a civil suit. In matters of procedure there are frequently non-compliances with the existing rules and it may be that some times irregularities are committed. But it by no means follows that such omissions or irregularities would vest in the Civil Courts Jurisdiction to re-open the matter and question the propriety of any order passed by the Revising Committee or the District Magistrate. 152 I.C. 817=1935 A.L.J. 139=1935 All. 106. Where in reversing the Deputy Commis-

CHAPTER IV.

ELECTION AND APPOINTMENT OF COUNCILLORS.

Elections.

[1][43. (1) For the purposes of election of councillors to a municipal council, the [2][State Government] after consulting the municipal council may, by notification;

Election of municipal councillors.

(a) divide the municipality into wards,

(b) determine the wards in which the seats, if any, reserved under sub-section (3) of section 7 shall be set apart, and

(c) declare for whom such seats are reserved.

(2) The wards referred to in clause (*b*) of sub-section (1) shall return, in addition to members for such reserved seats, one or more members for non-reserved seats. The number of such members shall be notified by the [2][State Government]. [3][Each of the other wards shall return such number of members (whether one or more) as may be notified by the [2][State Government].

LEG. REF.

1. This section was substituted for the original S. 43 by S. 36 of Madras Act X of 1930.

2. The words 'Provincial Government' were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; the word "State" was substituted for the word "Provincial" by A.L.O., 1950.

3. Substituted by Mad. Act XXI of 1939.

---

sioner's finding in an election petition the Local Government exercises its legitimate right of control over actions of its own officers, it is competent to do so and no Civil Court can then enquire into facts of the case. 31 N.L.R. 1=154 I.C. 311=1935 Nag. 5. A Civil Court has power under the Bihar and Orissa Local Self-Government Act to set aside the return of a candidate, who is declared elected to the District Board and to declare his rival candidate as the candidate duly elected. No special tribunal as contemplated in the Act, having been appointed or rules framed for the procedure thereof, the jurisdiction of the Civil Courts is not ousted in that respect. 14 P. 24=15 P.L.T. 623=1934 Pat. 670 (2) (F.B.). The plaintiff was the unsuccessful candidate at an election to the District Board. He brought a suit to set aside an election. He alleged that the presiding officer at the election was a partisan, that his conduct was such that when the plaintiff objected the defendant ordered his men to attack the plaintiff's party with the result that something in the nature of a riot took place which resulted again in there being no free voting. Held, that it could not be said that the riot was caused by the unfair conduct of the presiding officer, that the allegations did not disclose a dispute arising under the District Board Electoral Rules and within the cognizance of the District Magistrate and so the civil Court had jurisdiction to entertain the suit. 13 Pat. 35=151 I.C. 780=15 P.L.T. 36=1934 Pat. 27. Orders passed by the revising committee or the District Magistrate under the election rules framed by the Local Government are final and cannot be impugned in a Civil Court. 157 I.C. 270=1935 A.L.J. 1111. Where the Election Commissioner holds an election to be void and declares the person who got the next highest number of votes to be duly elected his order is valid even though the effect of the order may be to disenfranchise a large number of voters, who had voted in ignorance of the disqualification of the candidate whose election has been set aside. Propriety of ordering fresh election in such cases pointed out. 140 I.C. 540=1933 M. 133=63 M.L.J. 932. The order of the Magistrate holding that the nomination paper sent in by a person was in time is not final and the same can be question in a civil suit. 58 Cal. 87=34 C.W.N. 741=1931 C. 36. Notwithstanding a decision by the Chairman or the District Magistrate that the nomination paper of a candidate for election is in order, the District Judge in considering an election petition can go into the question again. 40 C.W.N. 124=1935 Cal. 773.

Sec. 43 (1).—Under S. 43 (1), a duty is cast on the Government, to consult the Municipality, the obligation arises whether the proposal is to divide the Municipality into wards or to set apart in particular wards seats reserved under S. 7 (3)). The consultation must be in respect of each individual ward in which it is proposed to set apart seats; a general consultation is not enough. 66 L.W. 53=(1953) 1 M.L.J. 88 =1953 Mad. 392.

(3) All the electors of a ward, irrespective of their community or sex, shall be entitled to vote at an election to any seat in that ward whether reserved or not.

(4) When issuing under sub-section (1) a notification which materially alters the existing division of a municipality into wards, the [1][State Govern- election authority shall, with the approval of the [1][State Government], determine—

LEG. REF.

1. The word "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws Order, 1937), the word "State" was substituted for the word "Provincial" by A.L.O., 1950.

Sec. 43 (4)—Rights and duty of Government.—The Government is not bound to adopt all proposals of the Municipality in dividing it into wards but has only to take the recommendations of the Council into consideration. (1953) 1 M.L.J. 252=1953 Mad. 510. Merely because voters' lists of different wards as constituted by the Government are not exactly equal, it does not follow that there is want of *bona fides* on the part of the Government. *Ibid.* Power of Government if exhausted by one exercise. See (1958) 1 An. W.R. 480.

Cases under Calcutta Municipal Act.—After the dismissal of an election petition on the petitioner, withdrawing the same, an application by another person for substitution of his name in place of the petitioner who has withdrawn is not maintainable, as there is no application on the record in which the pplicant's name could be substituted. Further, where the applicant, who is a defeated candidate, was respondent in the original petition and had every opportunity of knowing what had taken place and of making any application within time, there is no justification for the substitution being made. 41 C.W.N. 488. In dealing with election petitions under the Calcutta Municipal Act, the Court is concerned solely with the provisions of that Act and the rules which have been framed thereunder. It may be that with regard to question of procedure, the provisions of C.P. Code are applicable. 41 C.W.N. 488. The names of successful candidates in the Municipal elections were published in the Calcutta Gazettee on 9th April. 1936. The High Court was closed for the Easter vacation from the 10th to 17th April inclusive. The following day was Saturday on which the offices of the Court were open, but the Court did not in fact sit. On an application filed in the High Court under S. 46 of the Calcutta Municipal Act more than eight days after the publication of the Gazette. Held, that as that section provided for an application to be made to the Court, that application must be made to a Judge in open Court and if the Judges of the Court were not sitting in open Court as in the present case, on the Saturday immediately after the vacation, the application might be legally made on the first day on which the Judges were so sitting. 169 I.C. 921=41 C.W.N. 492. Particulars which were deliberately withheld from the election petition but set out in the affidavit in reply should not be excluded at the time of the trial. The respondent is, however, entitled to an adjournment and to cost of the day as of a hearing. 169 I.C. 921=10 R.C. 58=41 C.W.N. 492. It is only a person enrolled in the electoral roll of the constituency in which the validity of the election is questioned who is entitled to make an applicaton under S. 46 of the Calcutta Municipal Act. 41 C.W.N. 488. The words 'electoral roll' in S. 34 of the Bengal Municipal Act refer to the whole municipality, and any person whose name is on it is entitled to make a complaint of an offence committed in connection with an election, although he is not in the list of voters of the particular ward in which the election has taken place. I.L.R. (1939) 2 Cal. 442=184 I.C. 451 (2)=43 C.W.N. 1063=A.I.R. 1939 Cal. 662.

Sec. 43—Appointment of Commissioner as special officer—Consultation of Commissioner—Sufficiency.—S. 43, by necessary implication, imposes a duty on the Municipality to express their opinion on a question in regard to which they are consulted. This does not prevent the Commissioner of a Municipality from being appointed as a Special officer. While in the case of appointment of a person other than the Commissioner as Special officer, the Government has to prescribe the extent of the functions exercisable by him, in the case of the Commissioner, the Government can direct him to exercise the powers and duties of the Council. A Commissioner so appointed takes the place of the Council, and if he is consulted the statutory requirement is satisfied. There is nothing unusual or repugnant to public interest in such a provision being made in an emergency. I.L.R. (1958) Andhra Pradesh 466=(1958) 1 An. W.R. 480=A.I.R. 1958 And. Pra. 458.

Election dispute—Interference by writ.—When a Court or similar authority assumes a jurisdiction which it properly has not got by taking an erroneous view of the law a writ will be issued but there will be no writ if it makes a mistake in the law when acting in the exercise of a jurisdiction which it undoubtedly possesses. Where the Election Commissioner who possesses jurisdiction either to declare another person duly elected or to order a fresh election makes a mistake

ment] may direct that the alteration shall take effect from the date of the next ordinary elections.

(5) when the number of councillors to be returned by a ward is altered or when a new ward is formed, or when an existing ward is abolished the

---

LEG. REF.
Vide footnote 1 on page 49.

in overlooking that the votes cast for the disqualified candidate will be thrown away. Held, that the mistake did not warrant the issue of writ of certiorari. 39 L.W. 89=1934 Mad. 174=66 M.L.J. 421. The High Court cannot interfere, by issuing a writ of certiorari, with the order of an Election Commissioner, unless that order is passed without jurisdiction or in excess of jurisdiction. Provided he has jurisdicton, the fact that he decides a dispute in a particular way, does not take away his jurisdiction. Even if his reasons and conclusion are wrong, his order cannot be set aside or quashed by a writ of certiorari. 40 L.W. 865=67 M.L.J. 809. See also 41 Bom.L.R. 985. The fact that the Chief Judge of the Small Cause Court has wrongly interpreted the sections of the Municipalities Act and has thus arrived at an erroneous decision does not justify the issue of a writ of certiorari. 41 Bom.L.R. 984=A.I.R. 1939 Bom. 471=3 F.L.J. 61. The Election Officer has exclusive jurisdiction to examine the nomination papers and scrutinise them and listen to objections and then to decide whether the nomination papers should be received or rejected. Where he so rejected, the High Court cannot interfere by certiorari even if the Officer acted wrongly. The remedy in such a case is by an election petition. 137 I.C. 868=1932 Mad. 321=62 M.L.J. 644. As to jurisdiction of Magistrates, see 58 Cal. 87=129 I.C. 422=34 C.W.N. 741=1931 Cal. 36. If in an inquiry for which there is jurisdiction an error is made which can be regarded as something which went beyond the jurisdiction of the Court or was done without jurisdiction and is not merely a wrong view of the law then the writ may be granted. Where in respect of election for the office of President of a Panchayat Union the Vice-President of the Panchayat as well as the President, Taluk Board, initiated proceedings and the same person was elected at both the meetings and the Election Commissioner set aside both the elections. Held, that the result of election was in no way affected by the irregularity in procedure and the order of the Election Commissioner being one without jurisdiction it was a fit case for issuing a writ quashing his order. 57 Mad. 582=1934 Mad. 357=66 M.L.J. 601. A writ of certiorari will lie where the officer against whose proceedings it is directed was acting in a judicial capacity. But the writ is of a purely discretionary character and only to be resorted to where the merits of the case call for it. Held, that the proceedings before a Munsif acting as Election Commissioner are judicial and that an application for writ may be made to vacate his order. 57 Mad. 791=39 L.W. 193=1934 Mad. 190=66 M.L.J. 468. The High Court will not interfere with an order of the Election Commissioner unless he has acted without jurisdiction or in excess of it. Where the Court has committed only an error of law or facts in the exercise of its jurisdiction the superior Court cannot interfere. Where the voters in an area included a large number of Gosha ladies and the District Election Officer issued a circular to the polling officers to the effect that if the identity of the Gosha ladies was challenged by the candidates or their female agents they would have to unveil themselves and one of the candidates insisted at the time of election that each one of the ladies should unveil herself and it was alleged that in consequence most of the ladies were scared away from voting. Held. that the circular was not illegal or ultra vires and the candidate was entitled to enforce its observance. Held, further, that the Election Petition disclosed no offence and therefore the High Court was competent to issue a writ of certiorari quashing the order of the Election Commissioner setting aside the election. 57 Mad. 571=39 L.W. 465=1934 Mad. 269=66 M.L.J. 367.

Election Petition.—Under S. 39 of the Bengal Municipal Act, the dispute must be between candidates who are contesting the election. It is not enough if the petitioner happened to be a candidate. So an application, by one of the candidates that of the two opposite parties impleaded in his application, party No. 1 and not party No. 2 should be declared elected, is not maintainable under S. 39. 61 C. 477=38 C.W.N. 500=1934 Cal. 536. Section 39 of the Bengal Municipal Act merely provides an additional relief which may be given to a petitioner under S. 36 of the Act, when he was himself a candidate at the election. If he was not a candidate, the only relief he can ask for is that the election should be set aside. Where he is a candidate he may ask that he shall be declared to have been elected. 39 C.W.N. 971=63 C. 136. Held (dissenting from S.K. Ghose, J. the referring Judge).—To entitle a person to apply under S. 36 of the Bengal Municipal Act, he must show that he is a person qualified to vote at the election to which the question refers. The right to file the petition is confined to a person who was qualified to vote at the particular election which is called in question. The petitioner, in other words, must be entitled to have his name entered in

(a) the ward which each councillor then on the council shall be deemed to represent; and

the electoral roll of the ward the election of which he calls in question. Consequently a person who is entitled to vote in a particular ward of the Municipality cannot question the validity of an election of a Commissioner in a different ward. 39 C.W.N. 971=63 C. 136. See also (1938) 2 Cal. 69=42 C. W.N. 282=A.I.R. 1938 Cal. 768. The election of a member of a Municipal Board cannot now be questioned on the ground that he was not qualified to be a voter; or in other words, that his name had wrongly found a place in the list of electors passed by the revising authority and finally accepted by the District Magistrate. 128 I.C. 1=1930 A.L.J. 763=1931 A. 26. The publication in the Calcutta Gazette of the name of a person as an elected Commissioner does not prevent proceedings for setting aside his election being taken or continued before the District Judge. 40 C.W.N. 124=1925 Cal. 773. No suit will lie in any Civil Court for a declaration that the result of a municipal election has been wrongly declared or that the election of the members actually elected is illegal or that the Municipal Board is not legally or validly constituted or for an injunction to restrain the Board from functioning or acting as such. Such a suit is barred by S. 19 of the U.P. Municipalities Act which is a special law overriding the general jurisdiction of the Civil Courts to entertain suits of a civil nature under the Code of Civil Procedure. A.I.R. 1937 All. 365=169 I.C. 239=1937 A.W.R. 281= 1937 A.L.J. 336. It is not proper for the Local Government in framing rules to take a very narrow view of their obligations in the manner of appointing an authority to decide disputes relating to elections or in framing rules for the conduct of its proceedings. 152 I.C. 805=15 P.L.T. 623=1934 Pat. 670 (2) (F.B.).

Deposit when to be made.—The deposit of Rs. 50 is a condition precedent to the entertaining of a complaint; though a complaint dismissed merely on the ground of such non-deposit may be revived on the deposit being subsequently made, if the complaint is otherwise in order. 61 C. 361=38 C.W.N. 360=1934 C. 498.

A candidate who stands for election and fails to obtain the requisite number of votes prescribed by the rules and thereby forfeits his deposit is not entitled to maintain a suit in the Civil Court for refund of the deposit made by him on the ground that the electoral rolls which had been prepared had not been compiled from the lists and registers maintained in the Municipal Office under the Election Rules, and that the Returning Officer committed mistakes in not compiling the electoral rolls from such lists or registers. It is not at all necessary that the electoral rolls must exactly tally with such lists and registers, as the Returning Officer has power to depart from them for reasons to be recorded by him. 169 I.C. 239=1937 A.L.R. 490=1957 A.L.J. 336 =1937 A.W.R. 281=A.I.R. 1937 All. 365.

Ballot Papers invalid—Forfeiture of Deposit.—When an election is quashed on the ground that all the ballot papers are invalid and that no valid vote was cast at all, held that it was impossible to say that any particular candidate received less than the requisite minimium and that there could no forfeiture of the deposit in such a case. 54 A. 112=1931 A.L.J. 1097=1932 All. 158. Rejection of ballot papers when valid. (Ibid). See also I.L.R. (1938) 2 Cal. 69.

Election—Death of one of the candidates after nomination and before poll—If necessitates fresh nominations to be invited.—Where after the list of candidates for an election has been made final one of the candidates dies before the poll, the returning officer is not bound to countermand the notice of poll and to call for fresh nominations. The Act and the Rules do not contemplate such a procedure. It is therefore perfectly open and legal for the election officer to cancel the name of the deceased candidate from the list and hold the election with the rest of the candidates. 39 C.W.N. 910.

A candidate can withdraw before closing of poll. 1926 Cal. 1016=30 C.W.N. 670= 91 I.C. 722.

Chairman's election.—Two persons were validly proposed and seconded as candidates for chairman's place at a bye-election. Objection was raised that one of them was disqulified as the vacancy had arisen owing to his own resignation. The meeting was adjourned to a later date.. In a suit filed before date of meeting to have the other candidate declared elected, held, that he could not be declared to have been elected as the meeting was not yet over and as the objection raised was not disposed of and as the chairman has not declared him to be elected. 60 C. 1008=37 C.W.N. 1029= 1933 Cl. 443.

Section 27, Bengal Municipal Act clearly excludes the person whose resignation or removal caused the vacancy that is to be filled up and that being so it is clearly a disqualifying section, disqualifying from the bye-election the person by whose resignation or removal the vacancy was caused. 60 Cal. 1008=37 C.W.N. 1029=1933 Cal. 443.

'Elected or re-elected'—Meaning.—It is a recognized rule of interpretation that the words of a statute should be so construed as would bring them in harmony with the other provisions of that statute, provided of course the interpretation does no violence to the meaning of which they are naturally

(b) the ward or wards in which elections shall be held to fill up the vacancies, if any, in the council.]

Qualifications for inclusion in electoral roll for municipality and publication thereof.

[1][44. (1) Every person [2](whose name is included in such part of the electoral roll for any Assembly constituency as relates to the Municipality or any portion thereof) shall be entitled to be included in the electoral roll for the municipality prepared for the purposes of this Act, and no other person shall be entitled to be included in such roll.

Explanation (1).—Where [2][in the case of any constituency there is no distinct part of the electoral roll relating to the municipality all persons whose names are entered] in such roll under the registration area comprising the municipality and whose addresses [3][as entered in such roll] are situated in the

---

LEG. REF.

1. This section was substituted for Ss 44 and 45 by S. 3 (3) of the Madras City Municipal, District Municipalities and Local Boards (Amendment) Act, 1938 (Madras Act II of 1938).

2. Substituted by Madras Act XXIV of 1951.

3. Inserted by *ibid.*

---

susceptible.. The apparent inconsistency between Ss. 22 and 27 of the Bengal Municipal Act can be removed if the term 'elected' or 're-elected' is taken in a somewhat limited sense, in the sense that it means 'elected' or 're-elected' except at a bye-election under S. 27. 60 Cal. 1008=37 C.W. N. 1029=1933 C. 443.

Review and Revision.—Sub-section (4) of S. 37, Bengal Municipal Act, which gives to the order of the Judge a finality does not exclude the power of the Judge to review his own order.. The word 'final' used there means that the order is a non-appealable one: (30 C. 619; 2 C.L.J. 306, Foll. Case-law discussed). 40 C.W.N. 124=1935 Cal. 773. Though S. 43 of the Bengal Municipal Act is enacted in terms which are wide enough to exclude interference by the High Court under S.. 115, C.P. Code, whether the Act, being a local Act, is competent to take away the powers of the High Court under S. 115, C.P. Code, to revise the order of the District Judge in an election matter. 39 C.W.N. 971=63 C. 136. The expression 'District Judge' used in Ss. 36 to 44 of the Bengal Municipal Act means the Court of the District Judge over which the High Court has the power of superintendence under S. 107 of the Government of India Act. He is not a persona designata. When the District Judge therefore refuses to exercise a jurisdiction vested in him by the Bengal Municipal Act; as for example when he rejects an election petition on the ground that the petitioner has no locus standi to apply, the High Court under its powers of superintendence will order him to do that which he was bound to do, namely, to hear and determine the petition before him. 39 C.W.N. 971=63 C. 136. The whole scheme of Bom. Act III of 1901 is that in matters of dispute relating to municipal election, while inquiry shall be held by a Judicial Officer as distinct from a Revenue Officer, that Judicial Officer shall hold an inquiry as a persona designata and not as a Court.. It was not the intention of the Legislature that the words 'judicial authority' in Cl. (iv) of sub-s. (1) (c) of S. 11 should be construed to mean a Court as such. There is no distinction between an inquiry relating to the validity of the election itself and objections regarding the lists of voters. Hence the orders of the District Judge and of the Assistant Judge in an appeal relating to the amendment of the list of voters are in the capacity of persona designata and therefore an application against such orders does not fall under S. 115, C.P. Code. 176 I.C. 826=A.I.R. 1938 Sind 153. See also 42 C.W.N. 647=1938 C. 465.

An order on an application under S. 39 is subject to revision by the High Court where the Judge refuses to exercise jurisdiction. 61 Cal. 477=38 C.W.N. 500=1934 Cal. 536.

Sec. 44.—'Electoral roll' meaning of. I. L.R. (1939) 2 Cal. 442=43 C.W.N. 1063 =1939 C. 662. The validity of the collector's order under R. 36 of the election rules framed under the Act passed in substantial conformity with the requirements of the rules cannot be questioned in a Civil Court. 36 M. 120=21 M.L.J. 878=12 I.C. 311 (33 B. 604 at 609. Ref. to; 7 M. 466; 24 C. 107; 33 B. 334, Dist.) It may be that the Collector's order passed without any inquiry at all or based on grounds other than those set forth in R. 35 is liable to be impeached in a Civil Court. A suit for damages stands on a different footing from a suit for declaration and injunction againt the municipal council in respect of an election. (Ibid.) Majority of total votes —Votes obtained by disqualified candidate— Exclusion. See 56 A. 330=1934 A.L.J. 129=1934 A. 376. No writ of certiorari lies as against the revising authority for the preparation of electoral roll on the ground that the petitioner's name has been improperly included in the roll. If an objection is made that a person whose name is includ-

municipality shall be entitled to be included in the electoral roll for the municipality prepared for the purposes of this Act.

Explanation (2).—No person's name shall be included in the electoral roll for the municipality in more than one place.

[1][(2) As soon as may be, after the electoral rolls for the Assembly Constituencies which consist of, or comprise, the municipality or any portion thereof, have been published, revised or amended in pursuance of the Representation of the People Act, 1950, any person authorized by the election authorities in this behalf shall publish in such manner as the State Government may direct, the portions of such rolls which relate to the municipality or of the alterations therein, as the electoral roll for the municipality or as alterations to such roll, as the case may be].

(3) When a municipality has been divided into wards, the electoral roll for the municipality shall be divided into separate lists for each ward.

(4) Where after the electoral roll of a municipality or any alterations thereto have been published under sub-section (2), the municipality is divided into wards for the first time or the division of the municipality into wards is altered [2][or the limits of the municipality are varied] the election authority shall, as soon as may be after such division or alteration [2][or variation] as the case may be, in order to give effect to the division of the municipality into wards or to the alteration of the wards [2][or to the variation of the limits] as the case may be, authorize a re-arrangement and republication of the electoral roll for the municipality or any part of such roll, in such manner as the State Government* may direct.

(5) The electoral roll for the municipality published under sub-section (2), as revised by any alterations thereto subsequently published under that sub-section or under sub-section (4) shall remain in force until the publication of a fresh electoral roll for the municipality under sub-section (2).

(6) Every person whose name appears in the electoral roll for the municipality, as so revised, shall, so long as it remains in force, be entitled, subject to the provisions of this Act to vote at an election; and no person whose name does not appear in such roll shall vote at an election.

[3][*Explanation.*—In this section and in section 45 the expression "Assembly Constituency" shall mean a constituency provided by order made under

LEG. REF.

1. Substituted by Madras Act XXIV of 1951. ......
2. Inserted by Madras Act XXIV 1951.

*Substituted by A.L.O., 1950.

3. Substituted for the Original Explanation by Madras Act XXIV of 1951.

---

ed in the roll is not an assessee, all that the revising authority can enquire into is the fact whether he has been assessed. If he has, there is an end of the matter so far as the revising authority is concerned; and the question whether the assessee has been illegally or fraudulently assessed is a matter which does not lie within the scope of the revising authority's enquiry. In respect of such illegal assessment, there are other remedies open to the aggrieved assessee and a writ of certiorari is not open to him. 62 M.L.J. 263=34 L.W. 903=1932 M. 171. The chairman of a Municipality will be liable in damages if he refuses to register the name of a person as entitled to vote on behalf of a firm, if the refusal is not in good faith, which imlies due care and diligence. Express malice is not necessary. 29 M.L.J. 704=31 I.C. 322.

Finality of electoral roll.—There is no finality attaching to an electoral roll prepared for the municipality. It cannot be said that the Election Court cannot go behind the electoral roll. Rule 23 of the Rules for the conduct of elections clearly indicates that an entry in the electoral roll can be shown to be wrong. (1955) An. W.R. 688.

As to duty of municipality in the matter of publication of electoral roll. See (1958) 1 An. W.R. 480=1958 Andh. Pra. 458; (1958) 2 An.W.R. 456 (which follows) (1958) 1 An.W.R. 480.

The election authority has no power to add any names to the list; their only power is to bring the list in accordance with the electoral roll prepared for the relevant Assembly Constituency. (1958) 1 M.L.J. 419.

section 9 of the Representation of the People Act, 1950, †for the purpose of elections to the Madras Legislative Assembly.]

Power to correct electoral roll.

[1][45. Notwithstanding anything contained in section 44, the election authority may, after making such inquiry as he thinks fit, publish in such manner as the State Government may direct, amendments to the electoral roll for any municipality for the purpose of bringing it into accord with the electoral roll for the relevant Assembly Constituency.]

[46. (*Omitted by Madras Act X of* 1930.)]

Disqualifications of voters.

[2][47. Notwithstanding anything contained in [3][sub-section (6)] of section 44 a person who is of unsound mind, a deaf-mute or a leper shall not be entitled to vote at any election to a municipal council.]

Qualifications for membership of council.

Qualification of candidates.

48. (1) No person shall be qualified for election as a councillor unless [4][.] the name of such person appears on the electoral roll of the muncipality[4] [. . .].

LEG. REF.

†See now the Delimitation Commission Act (1952) (Central Act LXXXI of 1952).

1. Substituted by Madras Act XXIV of 1951 for S. 45 inserted by A.A.O. 1950.

2. This section was substituted for the original S. 47 by S. 39, Madras Act X of 1930.

3. This expression was substituted for the expression 'sub-S. (5)' by S. 3 (4) of the Madras City Municipal, District Municipalities and Local Boards (Amendment) Act, 1938 (Madras Act II of 1938).

4. The letter '(a)' at the commencement the word 'and' at the end and clause (b) were omitted by S. 40 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

Sec. 45—Amendment of electoral roll—effect—S. 45 empowers the election authority to make amendments to the electoral roll for the purpose of bringing it into accord with the roll of the relevant assembly constituency. There is nothing in the Act or the Rules which provides that the electoral roll as it stood when the data of election was notified should not be amended and brought up to date. Hence an election held on the basis of a revised electoral roll published well in advance of the date of the election, though after the date of notice of casual election, cannot be held to be illegal. (1956) An. W.R. 711. See also (1958) 1 An W.R. 480.

Sec. 45.—Power of election authority to revise electoral roll suo motu *and on objection.*—S. 45, while it empowwers the election authority to make amendments *suo motu*, does not preclude his acting on an objection made by an aggrieved person. The Scope of inquiry is very limited and S. 45 provides ample safeguards. The election office is also authorised to deal with clerical and accidental mistakes and misprints. (1958) 1 An W.R. 480=I.L.R. (1958) Andh. Pra.. 466.

Election dispute—Defeated candidate—If can be declared elected—R. 12 of the Rules for decision of election disputes.—A nomination, if accepted by the Returning Officer as valid, forms the basis of the election. If an election has been held, the defeated candidate cannot be declared elected unless it is held that the electors with the knowledge of the disqualification of one of the candidates had thrown away their votes. It is immaterial whether there are two candidates including the disqualified candidate or more than two candidates. When there is an election, the question really becomes one between the successful candidate and the electors. 1956 An.W.R. 1026. See also (1956) An.W.R. 711.

Secs. 47 to 49.—Pleader acting as civil Government vakil receiving Rs. 50 per mensem for giving legal advice to local officers outside Court hours.. Held, that the receipt of Rs. 50 was no doubt salary but the pleader was not a servant of the Government in respect of the giving of legal advice. 56 All. 330=1934 A.L.J. 129=1934 All. 376. A breach of the Election Rdles will not in itself justify an Election Court holding that the election is invalid and must be set aside. It has to be further proved that breaches of the rules materially affected the result of the election. 90 I.C. 868=1925 M. 877=48 M.L.J. 696. Where there was no evidence on which it could record a finding that the breach of the rules had materially affected the result of the election, the case was one for interference under S. 115, C.P. Code. (Ibid.) Test to find out whether the result of the election has been materially affected by a breach of the election rules. (Ibid.)

Sec. 48.—A summary **dismissal of a petition** presented for the registry **of the name of a person as a voter is illegal and**

[1][(2) No officer of Government other than a village officer shall be qualified for election or for holding office as a councillor:

Provided that this prohibition shall not apply to the holder of any office which does not involve both of the following incidents, namely, that the incumbent—

(a) is a whole-time [2][servant of the Government]; and

(b) is remunerated either by salary or fees:

Provided further that if any question arises either before or after an election whether any person is or is not disqualified under this sub-section the question shall be referred to the [3][State Government] whose decision shall be final.]

Disqualification of candidates.

49. (1) A person who has been sentenced by a criminal court to transportation or to imprisonment for a period of more than six month [4][for any offence other than an offence of a political character or an offence not involving moral delinquency] (such sentence not having been reversed or the offence pardoned) shall be disqualified for election [5][. . .] as a councillor while undergoing the sentence and for five years from the date of the expiration of the sentence.

(2) A person shall be disqualified for [6][election] as a councillor if such person is at the date of [7][nomination or election]—

LEG. REF.

1. This suub-section was substituted for sub-S. (2) by S. 40 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. The words "servant of the crown" were substituted for the words 'servant of the Government' by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word Crown, the word "Government" was substituted by A.L.O., 1950.

3. The words 'Provincial Government' were substituted for the words 'Local Government' by paragraph 4 (1) ibid, and for the word "Provincial" the word "State" was substituted by A.L.O., 1950.

4. These words were inserted by S. 41 (i) (a) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

5. The words 'or appointment' were omitted by S. 41 (i) (b), ibid.

6. This word was substituuted for the words 'election or appointment' by S. 41 (ii) (a), ibid.

7. These words were substituted for the words 'nomination, election or appointment' by S. 41 (ii) (a), ibid.

---

is not consistent with *bona fides* on the part of the officer. 29 M.L.J. 704=31 I.C. 322. The validity and conclusiveness of the register of candidates cannot be questioned in the election proceedings. 1925 M. 160=20 L.W. 851=47 M.L.J. 795.

Secs. 48 *and* 49 (2): *Basis of disqualification.*—The disqualification laid down in Ss. 48 (1) is based upon the satutary principle that a member of the Municipal Council shall not be under an obligation, pecuniary or otherwise, to the municipality, as in that contingency he cannot be expected to discharge his functions uninfluenced by any other considerations..

This applies equally to the individual liability of a member to the municipality as well as to the joint liability of the members to the Municipality. (1956) An. W.R. 1026.

Secs. 48, 49 *and* 51: *Scope of.*—Ss. 48 (1) and 49 specify the grounds of disqualification for election as a council or. There should be an authority to disallow the candidature of a person subject to any of the infirmities specified. But the Legislature at the same time contemplated that it might happen that the disqualification is not noticed at the time of the election. In such a case an elector or a rival candidate may in an election petition impeach the validity of the election on the ground of disqualification. Even if no petition is filed the disqualification may still be brought up, after the candidate becomes a councillor, at the instance of persons named in S. 51, for consideration by the District Judge. (1956) An. W.R. 1161=1957 Andh. Pra. 683.

Sec. 49.—The 'Vice-Chairman' of a Municipality is not an 'officer' of the Municipality within the meaning of S. 49 and a Vice-Chairman may himself be a candidate for a ward, while he is Vice-Chairman. 1925 M. W.N. 283=1925 Mad. 160=20 L.W. 851=47 M.L.J. 795.

Sec. 49 (2).—Distinction between the interpretation of the section of the Act and of the rules framed under the Act pointed out. 105 I.C. 364=1927 M. 971=53 M.L.J. 735.

Sec. 49 (2), Cl. (*vi*).—The word 'servant' as used in S. 49 means not a subordinate but one who gives his service to his

[1][(a)] of unsound mind, a deaf-mute or a leper;

(b) [2][an applicant to be adjudicated a bankrupt or insolvent or] an uncertificated bankrupt or undischarged insolvent;

(c) interested in a subsisting contract made with, or any work being done for, the municipal council except as a shareholder (other than a director) in [3][a company:]

[4][Provided that a person shall not be deemed to have any interest in [5][such contract or work] by reason only of his having a share or interest in—

(i) any lease, sale or purchase of immovable property or any agreement for the same; or

(ii) any agreement for the loan of money or any security for the payment of money only; or

(iii) any newspaper in which any advertisement relating to the affairs of the council is inserted; or

(iv) the sale to the council of any articles in which he regularly trades, or the purchase from the council of any articles to a value in either case not exceeding fifteen hundred rupees in the aggregate in any year during the period of the contract or work;]

[6][(cc) employed as paid legal practitioner on behalf of the council or as legal practitioner against the council;]

(d) an officer or servant holding office under this Act; or an honorary magistrate for the municipal town;

(e) already a councillor whose term of office as such will not expire before his fresh election [7][. . .] can take effect; [8] [or has already been elected a councillor whose term of office has not yet commenced;] [. . .]*

[9][(f) the servant or employer or the official subordinate or official superior of a councillor holding office on the said date;] or

---

LEG. REF..

1. The original clauses (i) to (vi) were lettered as (a) to (f) respectively by S.. 41 (ii) (b), Madras Act X of 1930.

2. These words were added by S. 41 (ii) (c), ibid.

3. These words were substituted for the words 'an incorporated company' by S. 41 (ii) (d), ibid.

4. The proviso to the sub-section was inserted as a proviso to clause (e) by S. 41 (ii) (e) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

5. These words were substituted for the words 'such a contract or work as aforesaid' by S. 41 (ii) (e), ibid.

6. This clause was inserted by S. 41 (ii) (f), ibid.

7. The words 'or appointment' were omitted by S. 41 (ii) (g), ibid.

8. These words were inserted by S. 41 (ii) (g), ibid.

*Word "or" omitted by Madras Act XIV of 1940.

9. This clause was substituted for cl. (vi) relettered as cl. (f) by S. 41 (ii) (h), Madras Act X of 1930.

---

master; and the word 'employer' is used in the sense of a person employing any one for his benefit or on his own account. The word 'servant' cannot apply to a person who is under the authority of another, nor the word 'employer' to a person who is only asked to supervise the work of another. The hereditary archaka of a temple is not a servant of the trustee of the temple under S. 49 (2). 29 L.W. 285=1928 M. 641=55 M.L.J. 632=110 I.C. 765.

Sec. 49 (2) (*f*): *Effect.*—The effect of S. 49 (2) (f) is not merely to disqualify Government Village Officers or part time Government Officers who are subordinates or superiors of sitting councillors. The much more natural meaning is that persons standing in a superior or subordinate position to a sitting councillor and holding office as such, not necessarily Government office, should be excluded. 1932 M.W.N. 1068=1933 Mad. 260. See also 1933 Mad. 133=63 M.L.J. 932.

Sec. 49 (3).—Persons, convicted of offences implying a defect of character, are not qualified to be appointed by election or otherwise and the Government has power to make rules as to how such disualification should be ascertained and enforced. 30 M. 113. When the fact of a conviction comes to the notice of the Governor in Council, he can take action by stating that, in his opinion, the conviction implies a disqualifying

[1][(g) in arrears of any kind due by him (otherwise than in a fiduciary capacity) to the municipality up to and inclusive of the previous year, in respect of which a bill or notice has been duly served upon him and the time if any specified therein for payment has expired.]

(3) Notwithstanding anything contained in sub-section (1), the [2][State Government] may direct that such sentence shall not operate as a disqualification.

[3][(4) *Omitted.*]

Disqualification of councillors.

50. (1) Subject to the provisions of section 51, a councillor shall cease to hold his office, if he—

(a) is sentenced by a [4][criminal] Court to such punishment [5][and for such offence] as is described in sub-section (1) of section 49;

LEG. REF.

1. In sub-S. (2) of S. 49 the word 'or' occurring at the end of clause (e) omitted; and after Cl. (f) the new Cl.. (g) added by Madras Act XIV of 1940.
2. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and the word "State" was substituted for the word "Provincial" by A.L.O., 1950.
3. This sub-section was omitted by S. 41 (iii) of Madras Act X of 1930.
4. This word was inserted by S. 43 (i) (a) of Madras Act X of 1930).
5. These words were inserted by S. 43 (i) (a), ibid.

---

effect of character, and ordering a new election accordingly. 30 M. 113.

Interest disqualifying candidate for election.—The object of the provision disqualifying a candidate for election on account of his having some special interest in municipal contracts, etc., is to provide for the purity of public life and to prevent corruption or anything which produces a situation in which the private interests of a councillor or commissioner conflicts with or is likely to conflict with or run counter to his duty as a public man. 58 Cal. 180=34 C.W.N. 972=53 C.L.J. 236=1931 C. 288. Section includes cases where a person is interested in any agreement for the loan of money or any security for the payment of money only to or by a Municipality. It cannot be said that payment of money by the Municipality for work done for it is an agreement for loan of money. 58 Cal 180=1931 C. 288. The plaintiffs were members of a joint family carrying on business.. It appeared that the father had entered into a Municipal contract but the work had been completed and the only thing remaining to be done was the payment of the money by the Municipality. The question of the plaintiff's disqualification having been raised; held; (1) that the plaintiffs were at least indirectly interested in the contract; (2) that even in respect of the payment some controversy might be raised before the council; (3) that the validity of the plaintiff's candidature should be determined as on the date of the nomination and not on the date of election; (4) that the plaintiffs were consequently disqualified from standing for election. Rules as to construction of penal provisions discussed. 58 C. 180=34 Cr. L.J. 972=53 C.L.J. 236. A teacher in a Municipal School is disqualified from being elected in any capacity.. 47 I.C. 169 (Cal.). The intention underlying S. 45 (1) of the Central Provinces Municipalities Act is to prevent jobbery and impure administration. As such the word 'interested' occurring in S. 45 (1) of the Act is to be interpreted in its ordinary wide sense and not confined to interest in money. Where the interest proved could not possibly lead to corruption then the word could be interpreted in favour of the accused. Where one member of a Municipal Committee helps another member merely out of friendship in respect of a contract in which the latter was found to have an 'interest', the former also becomes a person interested in the contract within the meaning of the section. A.I.R. 1940 N. 81=I.L.R. (1940) N. 133=1939 N.L.J. 567. A member of the Board acquiring share or interest in any contract must obtain permission in writing of the Commissioner. Where there is doubt as regards the interest, the Commissioner should be applied to for permission: 128 I.C. 394=1930 A.L.J. 1465=1930 All. 739.

Secs. 49 to 51.—A disqualification under S. 49 or S. 50 of the Act, of an elected candidate can be a ground for a petition impugning the election under R. 1 and R. 11 (c) of the Rules for the decision of disputes as to the validity of an election held under the Act. S. 51 of the Act only applies to cases where the election has gone through without challenge and something has occurred thereafter which raises doubt about the qualification of some sitting councillor; in other words, it applies only to a stage after a candidate has been duly

(b) becomes of unsound mind, a deaf-mute; or a leper;

(c) applies to be adjudicated or is adjudicated, a bankrupt or insolvent;

(d) subject to the proviso [1][clause (c) of sub-section (2) of section 49] acquires any interest in any subsisting contract made with, or work being done, for the council except as a share-holder (other than a director) in [2][a company . . . .;]

[3][(dd) is employed as paid legal practitioner on behalf of the councill or accepts employment as legal practitioner against the council;]

[4][(e) is appointed as an officer or servant under this Act or as an honorary magistrate for the municipal town;]

(f) accepts employment under [5][or becomes the official subordinate of] any other council;

[6][(g) Omitted.]

(h) ceases to reside in the municipality or within two miles thereof;

[7][(hh) fails to pay arrears of any kind due by him (otherwise than in a fiduciary capacity) to the municipality within three months after a bill or notice has been served upon him under this Act, or where in the case of any arrear this Act does not require the service of any bill or notice, within three months after a notice requiring payment of the arrear (which notice it shall be the duty of the executive authority to serve at the earliest possible date) has been duly served upon him by the executive authority; or]

[8][(i) absents himself from the meetings of the council for a period of three consecutive months reckoned from the date of the commencement of his term of office, or of the last meeting which he attended, or of his restoration to office as councillor under sub-section (4), as the case may be, or if within the said period, less than three meetings have been held, absents himself from three consecutive meetings held after the said date:

Provided that no meeting from which a councillor absents himself shall be counted against him under this clause, if due notice of that meeting was not given to him.

LEG. REF.

1. The words, figures and letter were substituted for the words and figures 'S. 49, sub-S. (2)' by S. 42 (1) (b) of Madras Act (X of 1930).

2. These words were substituted for the words 'an incorporated company' and the words 'or is employed as paid legal practitioner on behalf of the council or accepts employment as legal practitioner against the council' were omitted by S. 42 (1) (b) ibid.

3. This clause was inserted by S. 42 (1) (d) ibid.

4. This clause was substituted for the original clause by S. 42 (1) (d) ibid.

5. These words were inserted by S. 42 (1) (e) ibid.

6. This clause was omitted by S. 42 (1) (g), ibid.

7. Inserted by Madras Act XIV of 1940.

8. This clause and Explanation were substituted for clause (i) and the Explanation therto by S. 2 of the Madras District Municipalities (Second Amendment) Act. 1934 (Madras Act IV of 1935).

---

elected or appointed. The remedy provided by S. 51 can be availed of only by a councillor and not by a voter or candidate for election. 52 M. 732=30 L.W. 207=1929 M. 727=57 M.L.J. 241 (F.B.).

Secs. 50 (1) (*b*) *and* 51: *Disqualification—Material date.*—The material date for ascertaining whether or not a particular councillor had ceased to hold office on account of a disqualification under S. 50 (1) (b) is not the date of the inquiry. It is not as a result of the order of the District Judge under S. 51 that a Councillor ceases to hold office because of the supervening disqualification. S. 51 provides for recourse to the District Judge. The Councillor ceases to hold office because of the disqualification even if no application is filed or an application is filed very late.. A Councillor ceases automatically to hold office if he becomes disqualified in one or other of the ways mentioned in Cls. (a) to (i) of S. 50 (1) of

Explanation.—A meeting held under sub-rule (2) of rule 2 of Schedule III or rule 3 of that Schedule shall not be deemed to be a meeting within the meaning of this clause.]

(2) Notwithstanding anything contained in clause (a) of sub-section (1) the [1][State Government] may direct that such sentence shall not operate as a disqualification.

(3) Where a person ceases to be a councillor under [2][clause (a) of sub-section (1) or under section 60], he shall be restored to office for such portion of the period for which he was elected [3][. . .] as may remain unexpired at the date of such restoration, if and when the sentence or order is annulled on appeal or revision or the disqualification caused by the sentence is removed by an order of the [1][State Government] [4][and any person elected to fill the vacancy in the interim shall on such restoration vacate office.]

[5][(4) Where a person ceases to be a councillor under clause (i) of sub-section (1), the [6][executive authority] shall at once intimate the fact in writing to such person and report the same to the council at its next meeting. If such person applies for restoration *suo motu* to the council on or before the date of its next meeting or within fifteen days of the receipt by him of such intimation, the council may at the meeting next after the rececipt of such application restore him to his office of councillor:

Provided that a councillor shall not be so restored more than twice during his term of office.]

Decision on questions of disqualification of councillors by district judge.

51. (1) Whenever it is alleged that any person who has been elected [7][. . .] as a councillor is disqualified under [8][sub-section (1) section 48 section 49, section 50 or section 60] and such person does not admit the allegation, or whenever any councillor is himself in doubt whether or not he has become disqualified for office, [9][under section 50 or section 60], such councillor or any other councillor may, and the [6][executive authority], at the request of the council [10][or on a direction from the Provincial Government] shall apply to the District Judge of the district in which the municipality is situated.

LEG. REF.

1. The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4 (i) of the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word "Provincial" the word "State" as substituted by A.L.O., 1950.

2. These words, figure and letter were substituted for the words and letters 'clause (a) or clause (g)' by S. 42 (ii) (a) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. The words 'or appointed' were omitted by S. 42 (ii) (b) ibid..

4. This sentence was inserted by S. 42 (ii) (c) ibid.

5. This sub-section (1) was substituted for the original section by S.. 45 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

6. These words were substituuted for the word 'chairman' by S. 17 (1) on the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

7. The words 'or appointed' were omitted by S.. 43 (i) (a) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

8. These words and figures were substituted for the words and figures 'S. 49 or S. 50' by S. .43 (i) (b), ibid.

9. These words and figures were inserted by section 43 (1) (c), ibid..

10. Inserted by Madras Act I of 1942.

---

the Act. 67 L.W. 804=(1954) 2 M.L.J. 680.

Secs. 50 (1) (hh).—Where the disqualification alleged is S. 50 (1) (bb), must be strict compliance with the letter of the law. Every formality required by the law should be strictly with and the conditions enabling forfeiture should be fully satisfied: 1955 An. W.R. 972.

Sec. 51.—The placing by the polling officer of his initials on the face of the ballot papers does not per se contravene R.. 14 (1) of the Election Rules framed under Madras Act V of 1920, and does not itself invalidate the votes. The placing of such

(2) The said Judge, after making such inquiry as he deems necessary, shall determine whether or not such person is disqualified under [1][sub-section (1) of section 48, section 49, section 50 or section 60], and his decision shall be final.

[2][(3) Pending such decision the councillor shall be entitled to act as if he were not disqualified.]

LEG. REF.

1. These words and figures were substituted for the words and figures 'S. 49 or S. 50' by S. 43 (ii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. This sub-section was substituted for the original by S. 43 (iii), ibid.

---

initials does not in any way facilitate the identification of the particular voter and consequently, the provisions of R. 17 (1) are not infringed thereby. 1924 M. 766=46 M.L.J. 491. The serial number printed on the ballot paper is not a mark by which the voter may be identified within the meaning of R. 11 (1) and the fact that the serial number appearing in the counterfoil of the ballot papers was printed not only on the back of the ballot paper itself but also upon its face does not invalidate the election (Ibid.) It must be only from the mark itself that the means of identification must be obtained. (Ibid.) The rule providing for the marking of the serial number on the back of the ballot paper is not ultra vires of the Government. (Ibid.) At a municipal election the polling officer when giving out the ballot papers to voters, put not only the serial number on the back of them but also the voter's own number on the electoral roll, with the result that any one seeing this number on a voting paper could, by a reference to the electoral roll which was available to everybdy, identify the particular voter. As a matter of fact the numbers were not prticularly noticed at the time of election in question, and the voters were not identified thereby. Held, that the votes were invalid under R. 17 (1) of the Election Rules framed under Madras Act V of 1920, and that, as all the votes cast at the election were invalid no proper election had been held and that the candidate returned had not been properly elected. 1924 M. 764=46 M.L.J. 494. Held further, that the effect of the election being declared void was that a fresh election should be held and not that the retiring concillor should be deemed to have been re-elected. (Ibid.) Rule 17 (1) of the Election Rules does not require that the identification shall be made but merely that there is a possibility of such identification by reason of the mark. (Ibid.).

Under Madras Act II of 1922, the election of a President of a Local Board by persons who though elected as members thereof have not taken the oath of allegiance is invalid. 43 M.L.J. 543 (1)=75 I.C. 520=1924 M. 515. In an election petition to set aside the election of a person as a councillor of a municipality the chairman of the the municipality who is accused of corruptly assisting the elected candidate is not a necessary party. 110 I.C. 342=1928 M. 1129.

Sec. 51, Cl. (3).—The Municipalities are the creation of a special statute and the qualifications for the councillorship are laid down in the statute and the several disqualifications of candidates are set out seriatim in S. 49. If such disqualifications are overlooked at the time of the scrutiny the method of removing the councillor is provided in S. 51. The plain meaning of Cl. (3), S. 51, would exclude any other remedy, as no decision of any other tribunal in any other proceeding declaring the councillor to be disqualified would have any force when the clause says he shall be deemed to be qualified unless and until the decision of the District Court is given against him. To allow another remedy to be pursued would result in conflicting decisions.. 1928 M. 641=110 I.C. 765=55 M.L.J. 632. (Case-law discussed). A councillor can under S. 51 apply to the District Judge to decide on his own disqualification under S. 49. 1932 M.W.N. 1068. Provided the District Judge is acting within his jurisdiction his decision, however erroneous on the facts or even on the construction of the rules, cannot be revised by the High Court. 1932 M.W.N. 1068.

Election Offences.—This section and R. 11 of the rules for the decision of election disputes would equally apply to an offence in regard to the electoral roll even before its publication. 26 L.W. 323=105 I.C. 216=1927 M. 921=54 M.L.J. 269. See also 1928 M. 641=110 I.C. 765=55 M.L. J. 632. Questions of fraud or mistake in preparing the roll could be gone into by the court in deciding an election petition. (Ibid.) A Judge deciding an election petition under this Act is a Court and not a persona designata and an appeal would lie from his decision. (Ibid.) See also 54 M.L.J. 269; 1940 A.L.J. 420; 41 Bom. L.R. 984=A.I.R. 1939 Bom. 471. Rules for the conduct of elections, R. 11—Offence regarding electoral roll—Returning Officer's decision — Finalty — Election petition — Judge hearing whether person designata—Appeal. 54 M.L.J. 269. The Municipal Chairman is not a Municipal Officer within the meaning of S. 52 (2) of the Madras District Municipalities Act and therefore cannot be prosecuted thereunder. 57 M.L.J.

Election offences.

[1][52. (*Omitted.*)]

[1][53. (*Omitted.*)]

[1][54. (*Omitted.*)]

[1][55. (*Omitted.*)]

Infringement of secrecy of election.

56. Every polling officer, clerk or other person in attendance at the polling room who, except for some purpose authorized by law, communicates to any person any information showing directly or indirectly for which candidate any voter has voted, and every person who by any improper means procures any such information, shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

[1][57. (*Omitted.*)]

[1][58. (*Omitted.*)]

[1][59. (*Omitted.*)]

Disqualification of persons convicted of election offences.

[2][60. Every person convicted of an offence punishable under section 56 or under Chapter IX-A of the Indian Penal Code shall be disqualified from voting or from being elected in any election to which this Act applies or from holding the office of municipal councillor for a period of five years from the date of his conviction or for such shorter period as the court may, by order, determine.]

LEG. REF.

1. These sections were omitted by S. 44 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. This section was substituted for the original section by S. 45 of ibid.

331=1928 M. 1158. For the purpose of R. 11 (a) of the rules for the decision of disputes as the validity of elections, it is not necessary that the election itself should be materially affected by the commission of any of the offences alleged. An allegation that an offence under any of the Ss. 52 to 58 of the Act has been committed ought to be enquired into in an application under R. 11 (a). (54 M.L.J. 269, Foll.) It is not necessary to set aside an election under R. 11 (a)) that a conviction should have been sustainable under the sections alleged on the evidence before the Court, it is enough if, in the opinion of the Court hearing such petition, the offence has been committed and there is evidence on record to support such conclusion of the Court. 30 L.W. 889= 1929 M. 910 (2)=57 M.L.J. 551. As to whether sanction under S. 197, Cr. P. Code, is necessary in case of complaint for offence under the section, where the chairman was not acting in his official capacity. See 25 L.W. 608=1928 M.W.N. 801=57 M.L.J. 331. It is not an offence under S. 54 (b) (ii) to say of a candidate for municipal election 'he failed to get elected in his own place, and has come here expecting to be elected.' 1924 Mad. 815=81 I.C. 599= 47 M.L.J. 119. Bribery and corrupt practice are not covered by the expression 'material irregularity' as used in the Bengal Municipal Election Rules. 37 C.W.N. 122=1933 C. 492. Appearance before identifying officer—Giving of false name and taking slip for ballot paper—Amounts only to preparation to apply for ballot paper. 1929 M. 489=1929 M.W.N. 505=115 I.C. 813. The party who alleges corrupt practices in his election petition is bound to furnish particulars of the same, when the opposite party asks for such particulars and if the petitioner refuses to disclose the particulars on the ground that that would be disclosing evidence, the Court holding the election enquiry would be justified in disallowing the petitioner from giving evidence on that point. The petitioner cannot take shelter under O. 6, R. 2, C.P. Code. Though under R. 5 of the Election Rules framed under the Bengal Act, the procedure for suits under the C.P. Code are applicable, that has to be read along with the other provisions in the rules, and particularly R. 2, which requires that an election petition shall contain, among others, the particulars of the corrupt practice alleged. 39 C.W.N. 910. Abetting an election offence, viz., an application for a second voting paper by a person who has already voted at the same election is triable without sanction being obtained under S. 195, Cr. P. Code, though the facts alleged constitute an offence under S. 171-A, I. P. Code, for which sanction is essential. 1924 M. 487=

CHAPTER V.

POWERS OF MUNICIPAL AUTHORITIES IN RESPECT OF [1][PROPERTY, CONTRACTS AND ESTABLISHMENT.]

Property.

Vesting of public streets and appurtenances in the municipal council.

61. (1) All public streets in any municipality, with the pavements, stones and other materials thereof, and all [2][works], materials and other things provided for such streets all sewers, drains, drainage works, tunnels and culverts, whether made at the cost of the municipal fund or otherwise, in alongside or under any street whether public or private and all works materials and things appertaining thereto shall vest in the municipal council.

LEG. REF.

1. These words were substituted for the original words by Madras Act XXXVI of 1955.

2. This word was substituted for the word 'erections' by S. 46, ibid.

---

19 L.W. 201. The deposit required under old S. 59 (now repealed) was presumably intended as security for costs incurred by the accused and compensation, if any, payable. 81 I.C. 599=1924 M. 815=47 M.L.J. 199. If the Court in dismissing a complaint has not directed payment of costs or compensation, the intention of the legislature must be taken to be that the amount must be refunded to the complainant. 1924 M. 815=47 M.L. J. 199.

SEC. 61.—Drains referred to S. 61 (1) of Act as vesting in the Municipal Council are those which are alongside a public street and which are there for the purpose of draining a public street. A drain which though alongside a public street, is on private property and is constructed merely for the purpose of draining the private property is not one that vests in the Municipal Council under S. 61 (1). There is no provision in the Act for vesting private drains in Municipal Council, and although the Municipal Council has the right to insist that it shall be kept in proper repair and order, it has no power to impose any burden on the owner of the private drain except in circumstances coming under S. 141 of the Act. 51 L. W. 30=(1940) 1 M.L.J. 155=1940 M. 423. Section 30 of the Bengal Municipal Act has the effect of vesting in the Municipality all roads, including the subsoil, whether private or not, within the Municipal limits. 62 Cal. 692=39 C.W.N. 590=61 C.L.J. 182. All public streets vest in the Municipal Committee; and consequently the absence of the inclusion of the disputed road in the Municipal Jamabandi is *prima facie* good evidence which tends to negative the plea that the road is a public road. 146 I.C. 601=29 N. L.R. 361=1933 Nag. 267. Accused was convicted for committing breach of a municipal bye-law by constructing certain projections over some land which was claimed by the Municipal Board as being part of a public street. It was admitted that this land was the property of a private owner upon which the Municipality had encroached. Under the bye-law no person should build or keep a stall or otherwise interfere with or encroach upon any land which is the property of the board, or which is under the control of the Board, unless permission to that effect had been duly granted. On revision, held, that there coiuld be no public street over any land over which there was no public right of way and that as the land in question was private property over which there was no public right of way, it was not part of a public street nor was it under the control of the Board, which meant lawful control under the provisions of the Municipalities Act and that, therefore, the conviction was illegal. 162 I.C. 445=1936 A. L. J. 48=1936 All. 192. Municipality accepting gift of land on condition of erecting fencing at their own cost must do it. Donor cannot be compelled to erect the fence. 1924 Cal. 101=38 C.L.J. 13=73 I.C. 776. A Municipality can remove or plant trees, because it has full control over the sanitatation and general management of the Municipal area, but on no other ground, but cannot sell to make profit out of the trees which do not belong to it. 38 I.C. 93.

Rights of Municipality over Public Street.—The Municipal Committee cannot give any person permission to deposit goods for sale on any public street. It cannot lease any portion of a public street. When a street is vested in a Municipal Council, such vesting does not transfer to the Municipal authority, the rights of the owner in the site or soil over which the street exists. It does not own the soil but it has the exclusive right to manage and control the surface of the soil and so much of the soil below and of the space above the surface as is necessary to enable it to adequately mintain the street as a street. The Municipal Committee cannot use a public street otherwise than as a public street and it has no right to interfere with the enjoyment of the right of way by the public by letting out a portion of it to a particular individual for private

(2) The [1][State Government] may by notification withdraw any such street, sewer, drainage work, tunnel or culvert from the control of the council.

Duty of municipal council in respect of public streets withdrawn from its control.

[2][61-A. Where any public street has been withdrawn from the control of a municipal council under sub-section (2) of section 61 and placed under the control of the Highways Department of the *[State Government,] it shall be the duty of the municipal council to provide at the cost of the municipal fund to such extent as the Provincial Government may by general or special order direct.—

[3][(a) for the lighting, watering, scavenging and drainage of such street];

(b) for the provision, maintenance and repair of the water-supply mains, drains, and sewers in, alongside or under such street;

(c) for the provision, maintenance and repair of footways attached to such street:

Provided that where in the discharge of such duties, it is necessary for the council to open and break up the soil or pavement of any such street, the council shall obtain the previous consent of such officer of the Highways Department as the *[State Government] may be general or special order specify:

Provided further that in cases of emergency the council may, without such consent, open and break up the soil or pavement of any such street, but shall, as far as practicable, restore such soil or pavement to the condition in which it was immediately before it was opened and broken up; and a report of the action so taken and the reasons therefor shall be sent forthwith to the officer specified under the foregoing proviso.]

Collected sewage, etc., to belong to municipal council.

62. All rubbish and filth and other matter collected by a municipal council under this Act shall belong to the council.

LEG. REF.

1. These words were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; the word "State" substituted for the word "Provincial" by A.L.O., 1950.

2. Inserted by Madras Act VII of 1946.

*Substituted by A.L.O., 1950.

3. Cl. (a) substituted by Madras Act IX of 1948.

purposes. 73 I.C. 292=1923 Lah. 272. There is no rule that all land within limits of Municipal Town belongs absolutely to Municipal Committee. 47 I.C. 892. All public streets vest in the municipality and the latter has therefore power to levy fees on boardings and advertisements in public streets. *See* (1957) 2 An.W.R. 389=1957 Andh. Pra. 1053, cited under S. 3 (21), *supra*. As to power of Municipality or Government to sanction encroachment on public streets, see (1957) 2 An.W.R. 546 =1958 Andh. Prad. 586, cited under S. 182, *infra*.

Right of Municipality in Private Wells.—The mere fact that the owner of a well allows the public to draw water from his well does not make it a public well and vest it in the Municipality. If it is kept in a state which would be injurious to the health or offensive to the neighbours, the Municipality can ask the owner to cleanse it or repair it. 75 I.C. 896=1924 Lah. 511. See also I.L.R. (1938) All. 814=1938 A.L.J. 901=A.I.R. 1938 All. 548. When the Amritsar Municipal Committee passed a resolution to close a well which was sunk as a charitable act by a private person and was by him dedicated to the public and which lay in a recess at the end of *cul de sac* lane, held the cess together with the well must be regarded as a public place and as such vests in the Municipality under section 56 (1) (b), Municipal Act and the Municipality may deal with it as it pleases, provided that no private rights are invaded. 67 I. C. 899 (2)=1922 Lah. 167. Municipal Board is not the owner of the pipe laid in the house of a private consumer. 1926 Oudh 396=93 I.C. 856.

Power of Board of revenue to transfer control of endowments to municipal council.

63. [1][(1)] Subject to the control of the [2][State Government] the Board of Revenue may by notification, [3][with the consent of a municipal council, make over to the council] the management and superintendence of any charitable endowment in respect of which powers and duties attach to the Board of Revenue under the provisions of the Madras Endowments and Escheats Regulation, 1817,* and thereupon all powers and duties which attach to the Board of Revenue in respect thereof shall attach to [4][the council] as if it had been specially named in the said regulation, and the council shall manage [5][and superintend] such endowment.

[1][(2) The Board of Revenue may of its own motion and shall on a direction from the Provincial Government, by notification, resume the management and superintendence of any endowment made over to a municipal council under sub-section (1): and upon such resumption, all the powers and duties attaching to the council in respect of the endowment shall cease and determine).

Inventory of municipal property.

64. (1) The [6][executive authority] shall maintain an inventory of all immovable property owned by the municipal council or to which the council has a reversionary right.

(2) A copy of the said inventory shall be deposited in the office of the revenue divisional officer of the division in which the municipality lies, or, where there is no division, in the office of the district collector, and all changes shall be forthwith communicated to the said officer or collector.

Limitation of power to accept property in trust.

65. The council may accept trusts relating exclusively to the furtherance of [7][any purpose] to which the municipal fund may be applied.

Objects not provided for by this Act.

66. The [8][State Government] may, [9][with the consent of a municipal council, transfer to the council] the management of any institution or the execution of any work not provided for by this Act, and it shall thereupon be [10][lawful for the council to undertake such management or execution]:

LEG. REF.

1. Section 63 renumbered as sub-S. (1) of that section, and to the section as so renumbered, new sub-S. (2) added by Madras Act XXXVIII of 1942.

2. Vide footnote (1) at p. 52.

3. These words were substituted for the words 'with the consent of the municipal council make over to a municipal council' by S. 47 (1) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

*This regulation has been repealed in its application to Hindu Religious Endowments by S. 5 (3) of the Madras Hindu Religious and Charitable Endowments Act (XIX of 1951).

4. These words were substituted for the words 'such council' by S. 47 (1), ibid.

5. These words were inserted by S. 47 (ii), ibid.

6. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

7. These words were substituted for the word 'purposes' by S. 48, ibid.

8. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word "Provincial" the word "State" was substituted by A.L.O., 1950.

9. These words were substituted for the words 'with the consent of the council of any municipality, transfer to any municipal council' by section 49 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

10. These words were substituted for the words 'lawful for such Council to undertake the management of the institution or the execution of the work' section 49, ibid.

Sec. 63.—*See* 60 M.L.J. 456.

Sec. 65.—The powers which the Board of Revenue has under Reg. VII of 1817 are primarily powers of supervision and control designed to ensure due appropriation by existing trustees of endowmeats to the purposes for which they were destined. The powers of a Municipality in respect of religious endowments under the District Municipalities Act are wider than those of the Board under Reg. VII of 1817. Under the Act the Municipality has power of actual management in addition to the power

Provided that in every such case the funds required for such management or execution shall be placed at the disposal of the council by the [1][State Government].

Procedure for acquisition of immovable property under the Land Acquisition Act, 1894.

67. Any immovable property which any municipal authority is authorized by this Act to acquire may be acquired under the provisions of the Land Acquisition Act, 1894, and on payment of the compensation awarded under the said Act in respect of such property and of any other charges incurred in acquiring it the said property shall vest in the council.

Contracts.

Delegation of authority to contract and contractual powers of persons appointed by Government.

68. (1) The council may delegate to the chairman or a committee consisting of two or more members the power of making on its behalf any contract whereof the value or amount does not exceed [2][one thousand rupees]:

[3][Provided that in the case of municipalities included in Schedule IX or notified under sub-section (1) of section 12-C, the power of making on behalf of the council all contracts whereof the value or amount does not exceed one thousand rupees shall be exercised by a committee consisting of the chair-

LEG. REF.

1. Substituted by A.I.L.O., 1937 and A.L.O., 1950.
2. Substituted for 'Rs. 500' by section 50, of the District Municipalities Act (Amending) Act (X of 1930).
3. This proviso was added by section 10 of the Madras District Municipalities (Amendment) Act (XV of 1933).

of superintendence. A Municipality which has taken action in respect of a charitable endowment can sue upon a bond standing in the name of a superseded trustee without getting a formal assignment in writing of the bond. 31 M. 111. On this section, see also I.L.R. (1938) All. 814=A.I.R. 1938 All. 548.

Sec. 67.—Where the land is acquired by the Government for a Municipality under the Land Acquisition Act, the title to the land vests in the Government and the Municipality subsequently derives its title from the Government. 22 M.L.J. 445=15 I.C. 376=36 Mad. 373.

Sec. 68.—S. 68 applies both to executed and executory contracts. The section draws no distinction between executory and executed contracts. I. L. R. (1939) Mad. 928=A.I.R. 1939 Mad. 957. Under S. 68 (2) the necessity to obtain sanction of the council for the making of a contract before the same is made implies that the Council must be made aware not only of the matter in regard to which the contract would be entered into but also in regard to its terms and conditions. The sanction has to precede and not to follow the making of every contract which exceeds Rs. 1,000. Section 68 imposes a disability and thus forbids every person other than the Municipality from entering into or sanctioning a contract which exceeds Rs. 1,000 in value. I.L.R. (1939) Mad. 928=A.I.R. 1939 Mad. 957. Provisions of the Act requiring sanction of the council to contracts are compulsory. 1930 B. 414 =127 I.C. 491. A Municipal Council is a corporation with power to contract and to do all things necessary for the purposes of its constitution, the municipal land being held by it for the purposes of the Act. 35 M.L.J. 251=48 I.C. 128. The formalities prescribed by the Act for entering into a contract with a Municipal Council must be strictly complied with and where they are not so complied with the contract becomes unenforceable as against the Municipal Council. 97 I.C. 511=1926 M.W.N. 533. In a suit by a Municipal Council against a contractor who had bought in an auction the right to collect certain fees or tolls in the Municipality for the balance of money due from him, the defence was that the contract was not in writing as required by S. 45 of Madras Act IV of 1884 and that the claim was therefore unsustainable. Held, that the defendant having enjoyed the right of collecting the tolls for a year, was liable on an implied contract and the Municipal Council was entitled to a decree against him. 45 M.L.J. 164=72 I.C. 703. But see 16 I.C. 890 (Mad.) (30 M. 290. Foll.)

man, the commissioner and one member of the council elected by it; and the council shall not exercise or delegate the power of making such contracts.]

(2) In respect of a contract whereof the value or amount exceeds [1][one thousand rupees] the sanction of the council for the making thereof should be obtained before the same is made.

(3) Notwithstanding anything in the two preceding sub-sections, any person appointed by the [2][State Government] to carry any work into execution on behalf of a municipal council may, subject to such control as the [2][State Government] may prescribe, make such contracts as are necessary for the purpose of carrying such work into execution to the extent of the sum provided for such work; and the municipal council shall pay to the person so appointed such sums as may be required for the said purpose to the extent aforesaid.

Rules regarding the conditions on which contracts may be made.

[68-A. The power conferred by section 68 to make or sanction contracts shall be subject to such rules as may be prescribed in regard to the conditions on which, and the mode in which, contracts may be made or sanctioned by or on behalf of municipal councils.] (*Inserted by Madras Act X of* 1941.)

Mode of executing contracts.

69. (1) Every contract made by, or on behalf of council whereof the value or amount exceeds [3][one hundred rupees] shall be in writing and except in the case of contracts made under the provisions of sub-section (3) of section 68 shall be signed by two municipal councillors:

LEG. REF.

1. Substituted for 'Rs. 500' by section 50 of the Madras District Municipalities (Amendment) Act (X of 1930).

2. Substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937 and by A.L.O., 1950, for "Provincial."

3. Substituted for the expression 'Rs. 100' by section 51 of the Madras District Municipalities (Amendment) Act (X 1930).

Secs. 68 *and* 69.—Sections obligatory not directory. See 127 I.C. 491=32 Bom. L.R. 832=1930 B. 414. If the provisions of the section are not complied with the contract is void. (53 Mad. 352 and 97 I.C. 511, Ref.) 144 I.C. 784=37 L.W. 429=1933 Mad. 352. Scope of sections—Non-compliance—Lease not in conformity with—Suit on—Competency—Right to relief. 47 L.W. 668=1938 Mad. 746. See also 46 L.W. 892; 51 I.C. 891=80 P.L. R. 1919; 45 M.L.J. 164. Where a contract is void for non-compliance of the provisions of this section, S. 65, Contract Act, has no application and neither the principle of *quantum meruit* nor the principle of *quantum valebat* applies. (Case-law reviewed.) 37 L.W. 429=1933 M. 332. See also 1938 Mad. 90=1937 M.W.N. 1101; 43 L.W. 39 =1936 M. 98; 8 Luck. 1=9 O.W.N. 461=1932 Oudh 193 (F.B.). The Madras District Municipalities Act (1884) makes provisions concerning only with contracts, but it is silent with regard to any agreement entered into by a Municipal Council. Therefore, if a Municipal Council makes an agreement and it is found that such an agreement is not enforceable by law as not having been properly executed the agreement becomes void; when an agreement is discovered to be void but the Municipal Council, which is a person in law, who has received any advantage under such an agreement is under S. 65, Contract Act, bound to restore it. 58 M. 65=151 I.C. 46=1934 M. 480=67 M.L.J. 38. See also 1933 M. 332; 43 L.W. 39=1936 M. 98; 9 O.W.N. 461=1932 Oudh 193=8 Luck. 1 (F.B.). Where the President of the District Council, who had authority to give contracts, ordered certain work to be done by the plaintiff but the contract was not reduced to the form of a document, though being for over Rs. 100 it ought to have been in writing, plaintiff is entitled under S. 70, Contract Act, to be compensated for the work done on the principle of *quantum meruit* though he could not sue on the contract and the absence of a contract in writing is no answer to the action brought by the plaintiff in respect of the work done by him for the Council. 10 Rang. 522=1932 R. 176. The question whether a sale by the Municipal Council was effected in the manner prescribed by law cannot be considered to be entirely a question of law, as it involves the question whether the sale was in fact supported by any writing as required by that section. The Committee has no right to raise the point at all at the stage of argument. 37 P.L.R. 289=1935 Lah. 632. Where a corporation or committee makes a

contract, the formalities for which are prescribed by statute, and when there is a failure to observe those formalities, the contract is invalid and cannot form the subject of an action, even though there is executed consideration. (141 I.C. 23, Appr.) 157 I.C. 879=1935 Pesh. 124. Where a municipal contract was not executed in accordance with S. 47 but the parties had acted on the same, held, that the person who supplied the goods was entitled to recover interest on the amount due to him of which he had been wrongfully kept out. 134 I.C. 1028=1931 Lah. 457. Where the factum of the sale is admitted by the Municipal Committee, the conditions subject to which the sale was made must also be held to have been admitted. If the sale is not supported by a formal writing it is open to the Committee to supply this omission at any time. When, therefore, it admits the sale, it cannot avail itself of the provisions of S. 47 to repudiate the conditions subject to which the sale was made. 37 P.L.R. 289=1935 Lah. 632. Where a Corporation enters into a contract under a statute and the terms of the statute relating to the formalities of the contract are not observed, the contract cannot be enforced against or by the Corporation. The contract is invalid and cannot form the subject of an action, even though there is executed consideration. But a decree can, nevertheless, be passed against the Corporation on the basis of *quantum meruit.* (Case-law discussed.) 141 I.C. 23=1933 Pesh. 16. See also 121 I.C. 187 =11 Lah. 121=1929 L. 742; 54 C. 189= 1927 C. 465; 45 M.L.J. 164; 11 Lah. 375 =1930 Lah. 364. Where the Municipal Act expressly provides that a contract with the Board should be under seal, one not under seal is void and not binding on the Board. No relief can, therefore, be given to a person relying on a contract entered into between him and the Board but not under seal even on *quantum meruit,* for a man cannot be allowed to do by indirect means what he is forbidden to do directly. 137 I.C. 574=1932 Oudh 193 (F.B.). But see 141 I.C. 23, *supra.* Although a contract between a Municipal Committee and a third party had not been reduced to writing in accordance with the provisions of the Municipal Act, yet if the committee had performed its part of the contract and the other party had derived benefit therefrom, he must pay for what he had actually received and enjoyed as if there was an implied contract between the two for payment, and a suit by the Municipal Committee for the same is maintainable. (1929 Lah. 742, Foll.). 38 P.L.R. 41. A contract for delivery of goods was made with the plaintiff by or on behalf of the Municipal Committee which not being in writing under seal was not binding on the Municipal Committee under S. 47 of the Act. Plaintiff who delivered the goods claimed the price thereof and the Committee argued that the plaintiff was entitled to the return of the goods only and not its price. The Municipal Committee also resisted the plantiff's claim for an amendment of the plaint by inserting a relief for the return of goods under S. 70, Contract Act. Held, that as the Committee resisted the plaintiff's claim to amend the plaint, it was not open to the Committee to say that the plaintiff was entitled to a return of the goods only and not for recovery of its price. 1933 L. 14=145 I.C. 687. A lease of municipal land requires a documents in writing, S. 47 being mandatory. Where however the contract of lease is unenforceable for want of a written document the lessor can recover compensation for the period during which the lessees were in possession. 13 Lah. 561=143 I.C. 621=1933 L. 15. A contract having incomplete signature is unenforceable. 99 I.C. 643=1926 Oudh 388=1 Luck. 444. Auction sale held on behalf of municipality and confirmed by President in a meeting becomes a contract. 1924 Nag. 227=78 I.C. 1052. The fact of the Board passing a resolution that they had noted certain proceedings of a sub-committee, cannot be construed as a resolution sanctioning contracts confirmed by the sub-committee in its proceedings. 99 I.C. 643=1 Luck. 444. Where a sanction of the council was obtained for one kind of contract and subsequently a different contract was entered into in its place, held, that the sanction obtained for the original contract was not sufficient. 127 I.C. 491=32 Bom.L.R. 832=1930 Bom. 414. One M.R. applied to a Municipality for the grant of a contract to him and paid an advance. The Municipal Board passed a resolution sanctioning a contract in the name of one N.M. who was a nephew of M.R. Subsequently a deed was drawn up in accordance with the resolution, but instead of the name of N.M. the name of M.R. was substituted, and the deed of contract was signed by M.R. and also by the Chairman and Secretary of the Municipal Board. It was found as a fact that the name of N.M. was entered in the resolution either by mistake or as benamidar for his uncle M.R. Held, that the name of N.M. must be deemed to have been entered in the resolution only as an alias for M.R. and that the resolution sanctioning the contract must be deemed to be in respect of the contract in question and that it was not invalid or unenforceable by reason of S. 96 (1) of the U.P. Municipalities Act. 10 Luck. 176=151 I.C. 1049 =1934 Oudh 439 (F.B.).

Secs. 68 *and* 69—Scope—Non-compliance—Effect on enforceability of contract. See I.L.R. (1955) Mad. 128=(1954) 2 M.L.J. 743=A.I.R. 1955 Mad. 82 (F.B.) a case under S. 81 (3), City Municipal Act.

A contract which is not in conformity with the requirements of Ss. 68 (1) and (2) and 69 of the Act does not bind the parties

[1][Provided that in the case of municipalities included in Schedule IX or notified under sub-section (1) of section 12-C, every such contract shall be signed by the commissioner.]

(2) A contract executed or made otherwise than [2][in conformity with the provisions of this section, of section 68, and of the rules referred to in section 68-A] shall not be binding on the municipal council.

LEG. REF.

1. This proviso was added by section 11 of the Madras District Municipalities (Amendment) Act (XV of 1933).

2. Substituted by Madras Act (X of 1941).

---

and is unenforceable by either party thereto. Neither the municipality nor the party who has contracted with the municipality can enforce it. But a suit by the municipality for damages for breach of an agreement to take on lease certain properties of the municipality is not a suit to enforce a contract entered into with it, and the absence of a contract as required by S. 69 is no bar to the claim of the municipality for damages. 69 L.W. 974=(1959) 1 M.L.J. 153, following (1954) 2 M.L.J. 743.

Sec. 69.—What S. 69 requires is that the contract by or on behalf of the municipal council shall be signed by two municipal councillors. It is not sufficient if it is merely witnessed by the municipal councillors. A contract executed by a purchaser of the right of collecting the municipal tolls, the signature of the executant being witnessed by the vice-chairman and two councillors is not a contract which is in compliance with the provisions of S. 69. The wording of the proviso to S. 69 (1) indicates that in the case of Municipalities falling within its scope, it would be sufficient if a contract is signed by the Commissioner alone and it need not be signed by two councillors as well as the Commissioner. 202 I.C. 84=1942 M.W.N. 429=55 L.W. 285=A.I.R. 1942 Mad. 481=(1942) 1 M.L.J. 554. The signature of the councillors as attestors or witnesses cannot be deemed to be appended as executants, *i.e.*, in another capacity. The contract cannot therefore be sued upon. 1937 M.W.N. 1104=46 L.W. 892=1938 M. 90. This was a suit by a contractor against a Municipality on a contract which was proposed to be entered into between the defendant, Municipal Council and the contractor, plaintiff. The contract was signed by the contractor but was not signed by the chairman, or vice-chairman and one councillor, as required by S. 45 of the Act (old Act). The contract was of a value above Rs. 200. Held, the contract was not binding on the defendant council. 29 M. 360 (27 A. 592, F.) See also 30 M. 290. Nor can the Municipality be rendered liable on the ground of executed consideration. 29 M. 360. An agreement entered into by a Municipal Council with a person, which should have been effected in the manner prescribed in S. 45 of the Act (old Act) is not valid, if its provisions are not complied with. Such an agreement binds no party; and the fact that the agreement was partially acted upon cannot be held to render it an operative contract in spite of the provisions of the statute which have been violated. 30 M. 290 (27 B. 618, R.). See also 1934 Mad. 335 =39 L.W. 508=1934 M.W.N. 592. A contract made by a Municipal Council which is not in writing and signed by two municipal councillors as required by S. 69 (1) of the Act is not enforceable and a suit by the Municipal Council on such a contract is not sustainable. (30 M. 290 and 54 C. 189, Rel. on; 45 M.L.J. 164; Not. Foll.) 53 Mad. 352=1930 M. 600=58 M.L.J. 377. Defendant took a lease or a licence to collect the tolls of a Municipal Market and agreed to pay a sum of Rs. 4,001 to the Municipality in consideration of the licence giving him the right to collect the tolls. There was only a resolution of the Municiality, but no contract or document under seal as required by S. 64 of the Bihar and Orissa Municipal Act. Defendant, however, entered into possession of the market under the resolution. The Municipality through its representative sued to recover money due to it under the contract from the defendant. Held, (1) that there was no contract binding under the Act, and the contract not being in accordance with S. 64 could not be sued upon; (2) that if the Municipality be held entitled to sue on the basis of an implied contract, Art. 115 of the Limitation Act applied to the case, and the suit brought more than three years after the breach was barred. 17 Pat. 277= 19 Pat.L.T. 653=A.I.R. 1938 Pat. 429. The chairman of a Municipality held an auction and leased out to the highest bidders the sewage farm belonging to the Municipality for a period of two years. As required by the rules the successful bidders signed unstamped muchilikas as soon as their bids were accepted. According to S. 69 it was necessary that subsequently formal written contracts should have been drawn up and executed by the successful bidders and also signed by two Municipal Councillors. These contracts were not however taken in respect of the lease of the sewage farm. Subsequently the lessees committed default in paying the rent and the Municipality filed suits against them based on the contracts entered into by them or in the alternative on the basis of their liability to pay damages for use and occupation of the farm.

Establishment.

Establishment of municipal council.

[1][70. The sanction of the council shall be obtained for all proposals for fixing or altering the number, designations and grades of its officers and servants and the salaries, fees and allowances payable to them.

(2) Such proposals shall be taken into consideration by the council only at the instance of the [2][executive authority] and the council may sanction them with or without modifications:

Provided that no proposal adversely affecting any municipal officer or servant who has been in the permanent service of the municipality for more than five years and is drawing a salary of not less than fifty rupees per mensem, shall be considered except at a special meeting convened for the purpose and no such proposal shall be given effect to, unless assented to by at least one-half of the members then on the council.]

[3][(3) Notwithstanding anything contained in sub-sections (1) and (2) the [4][State Government] shall have power to fix or alter the number, designations and grades of, and the salaries, fees and allowances payable to, the officers and servants of any municipal council or any class of such officers and servants; and it shall not be open to the municipal council to vary the number, designations, grades, salaries, fees or allowances as so fixed or altered, except with the previous sanction of the [4][State Government]].

LEG. REF.

1. Substituted for the original section by section 52 of the Madras District Municipalities (Amendment) Act (X of 1930).

2. Substituted for 'chairman' by section 17 (1) of the Madras District Municipalities (Amendment) Act (XV of 1933).

3. This sub-section was added by section 3 of the Madras District Municipalities (Second Amendment) Act, 1934 (IV of 1935).

4. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word "Provincial" the word "State" was substituted by A.L.O, 1950.

The suits were originally dismissed for the reason that the contracts could not be proved, the formal documents prescribed by the statute not having been executed by the parties. The cases were taken up in revision to the High Court and they were remanded for trial on the alternative prayer for damages for use and occupation. The suits were thereupon partially decreed. The Examiner of Local Fund Accounts surcharged the chairman of the Municipality for the difference between the amounts decreed and the amounts claimed by way of rent, and also for the stamp duty and penalty paid into Court for proving the unstamped muchilikas. It was proved that an application for refund of the stamp duty paid was preferred to the Board of Revenue long after and that the same was dismissed as barred by limitation. It was also proved that according to the routine of procedure prevailing in the office of the Municipality the manager was responsible for taking the formal contracts from the successful bidders. Held, that the chairman of the Municipal Council could not under the circumstances be said to have acted negligently in the matter of not taking formal contracts for the leases, and that the order of surcharge was not justified either as regards the stamp duty and penalty paid, or as regards the portion of the rent that was lost to the Municipality as a consequence of the formal contracts of lease not having been taken. I.L.R. (1943) Mad. 282=207 I.C. 230=55 L.W. 673=A.I.R. 1943 Mad. 97=(1942) 2 M.L.J. 538.

Sec. 70.—A Municipal Committee is not a public servant, but members constituting are public servants. 122 I.C. 258=1930 N. 33=25 N.L.R. 194. Station Superintendent appointed by a Municipality is a public servant. 135 I.C. 220=1932 L. 188. Whether manager of a municipal office is a public servant is a question of fact. In 51 M. 86 he was assumed to be one. A person employed by a Municipality as a tax-collector is a public servant. 75 I.C. 719=1 Pat. 423=1922 P. 532. A Conservancy Officer of Corporation of Calcutta was held to be a public servant. 1930 C. 665. Since the amendment of the Bombay District Municipalities Act by the Bombay Decentralization Act, 1915, the Municipal Councillors are public servants who are removable without the sanction of the Governor-in-Council. By S. 16 as amended they are removable by the Commissioner and delegated powers are no longer needed by the Commissioner. 1932 Sind 177. Members of a committee appointed under S. 21 (1) of the Bengal Municipal Act being still commissioners of the Municipality, are not Municipal Officers

[1][71. (1) [2][In any municipality which is neither included in Schedule IX nor notified under sub-section (1) of section 12-C] a post of secretary may be sanctioned by the council.

The secretary, the health officer and the engineer.

(2) Any municipal council, by special resolution may, and every council which during three consecutive years has realized an income of one hundred thousand rupees from ordinary receipts, shall, if so required by the [3][State Government], sanction a post of health officer and a post of municipal engineer.

[4][(2-A) Any municipal council which has undertaken the generation, transmission, or supply of electrical energy, by special resolution may, and if so required by the [3][State Government] shall, sanction a post of municipal electrical engineer]. [Any such municipal council, if so required by the [3][State) Government], shall also sanction by special resolution, one or more posts of assistant municipal electrical engineer.] (*Added by Madras Act XXIII of* 1945).

(3) The salaries of these officers shall be fixed by the municipal council subject to the approval of the [3][State Government].

(4) Every secretary, health officer, [5][engineer, electrical engineer or assistant electrical engineer] shall devote his whole time to the duties of his office and shall not engage in any other profession, trade or business.]

72. (1) On the occurrence of a vacancy in, or after the creation of, an office of health officer [6][engineer, electrical engineer or assistant electrical engineer] an appointment shall be made thereto by the council subject to the approval of the [3][State Government] within four months from the date on which the vacancy occurred or the office was created or, in the event of any appointments so made by the council not being confirmed by the [3][State Government] within thirty days of the date of the receipt by the council of the orders of the [3][State Government].

Filling up of the appointment of health officer, engineer or electrical engineer.

(2) In default of an appointment being made by the council as aforesaid, the [3][State Government] may appoint a person to hold the office, and such appointment shall, for all purposes, be deemed to have been made by the municipal council.

(3) Pending the settlement of an appointment under sub-section (1) or (2) the municipal council may appoint a person to hold the office temporarily

---

LEG. REF.

1. This section was substituted for the original section by section 53 of the Madras District Municipalities (Amendment) Act (X of 1930).

2. These words were substituted for the words 'If, in any municipality, there is salary attached to the office of chairman' by section 17 (2) of the Madras District Municipalities (Amendment) Act (XV of 1933).'

3. The words Provincial Government were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; the word "State" was substituted for the word "Provincial" by A.L.O., 1950.

4. This sub-section was inserted by section 2 (ii) of the Madras District Municipalities and Local Boards (Amendment) Act (XVIII of 1938).

5. These words were substituted for the words 'or engineer' by section 2 (iii), ibid. See also Madras Act XXIII of 1945.

6. These words were substituted for the words 'or engineer' by section 2 (iv), ibid. See also Madras Act XXIII of 1945.

---

or servants under S. 28 (2) of the Act; and a prosecution under S. 28 of the Act is therefore not maintainable against them. Such members are "public servants" under S. 197, Cr. P. Code, their functions being covered by the expression "official duty"; and sanction of the Local Government would be necessary for their prosecution. But acts done by them after the final publication of the roll, and having no reference to the things done by them while acting or pur-

and may direct that the person so appointed shall receive such salary not exceeding the sanctioned salary of the post as it shall think fit.

[1][(4) No such officer shall be removed from office except with the consent of the [2][State Government]. Such consent shall be given if the removal is recommended by a resolution of the council passed at a special meeting called for the purpose and supported by the votes of not less than two-thirds of the sanctioned strength of the council.

Filling up of appointments other than those specified in sections 12-C and 72.

[3][73. Save as provided in sections 12-C and 72, appointments to all posts under the municipal council the pay or the maximum pay of which exceeds [4][fifty rupees] per mensem shall be made [5][by a committee consisting of the chairman, the commissioner and one member elected by the council] and appointments to all other posts under the council shall be made by the executive authority, subject to [6][any rules (including rules for the representation of different communities) which the [2][State Government] may make in this behalf:]

Provided that in case of emergency—

(a) the executive authority may appoint temporarily such officer and servants as may in his opinion be required for the purposes of this Act and the employment of whom for any particular work has not been prohibited by any resolution of the municipal council; and

(b) every appointment made under clause (*a*) shall be reported by the executive authority to the council at its next meeting.]

Power of [2][State Government] to transfer officers and servants of municipalities.

[7][73-A. (1) Notwithstanding anything contained in this Act or in the Madras Local Boards Act, 1920, the [2][State Government] shall have power to transfer any officer or servant of a municipality to the service of any other municipality or of any local board constituted under the Madras Local Boards Act, 1920];

Provided that such power shall be exercised after consulting the local bodies concerned.

(2) The [2][State Government] shall have power to issue such general or special directions as they may think necessary for the purpose of giving due effect to transfers made under sub-section (1).]

LEG. REF.

1. This sub-section was added by section 54 of the Madras District Municipalities (Amendment) Act (X of 1930).

2. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; the word "State" was substituted by A.L.O., 1950, for the word "Provincial".

3. Substituted for the original section 73 by section 12 of the Madras District Municipalities (Amendment) Act (XV of 1933).

4. Substituted for the words 'eighty rupees' by section 3 of the Madras District Muncipalities (Amendment) Act, 1935 (XVIII of 1935).

5. Substituted for the words 'by the council' by section 3, ibid.

6. These words were substituted for the words 'any rules which the Local Government may make in this behalf' by section 4 of the Madras District Municipalities (Second Amendment) Act, 1934 (Madras Act IV of 1935).

7. This section was inserted by section 5 of ibid, now the Madras District Boards Act, 1920 (XIV of 1920).

---

porting to act as such, do not attract the protection given by S. 197, Cr. P. Code. 39 C.W.N. 20=69 C. 275.

Secs. 73 *and* 75.—See 1936 Mad. 498=170 I.C. 286.

Power of council to frame service regulations.

74. Subject to the [1][provisions of this Act and any rules which the [2][State Government] may make in this behalf,] the council may frame regulations in respect of officers and servants on the municipal staff—

(a) fixing the amount and nature of security to be furnished;

(b) prescribing educational or other qualifications;

(c) regulating the grant of leave, leave allowances, [3][acting allowances and travelling allowances];

(d) regulating the grant of pensions and gratuities;

(e) establishing and maintaining provident funds and making contribution thereto compulsory;

(f) regulating conduct; and

(g) generally prescribing conditions of service:

Provided—

(i) that the amount of any leave, [4][allowances, travelling allowances, pension or gratuity, provided for in such regulations] shall in no case without the special sanction of the [2][State Government] exceed what would be admissible in the case of Government servants of similar standing and status;

(ii) that the conditions under which such allowances are granted or any leave, superannuation or retirement is sanctioned shall not without similar sanction be more favourable than those for the time being prescribed for such Government servants.

Power to punish municipal officers or servants.

75. Subject to the provisions of section 77 and to such control as may be prescribed by the [2][State Government] the [5][executive authority] may [6][censure, fine, withhold promotion from], reduce, suspend, remove or dismiss any municipal officer or servant [7][in its service] except a health officer or [8][a municipal engineer, a municipal electrical engineer or an assistant municipal electrical engineer] for any breach of departmental rules or discipline, or for carelessness, unfitness, neglect of duty or other misconduct:

[Provided that a fine shall not be imposed on any municipal officer or servant unless he is a bill collector or the holder of a post which is classified by the [2](State Government) as inferior or menial.] (*Added by Madras Act XVIII of* 1942).

LEG. REF.

1. Substituted for the words and figures 'provisions of sections 12, 17, 71, and 77 and any rules made by the Governor-in-Council' by section 56 (i) of the Madras District Municipalities (Amendment) Act (X of 1930).

2. See footnote 2, page 71.

3. Substituted for the words 'and acting allowances' by section 56 (ii), ibid.

4. Substituted for the words 'and leave allowances,' gratuity or pension granted under these regulations' by section 56 (iii), *ibid.*

5. Substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act (XV of 1933).

6. Substituted for the word 'fine' by S. 57 (i) of the Madras District Municipalities (Amendment) Act (X of 1930).

7. Inserted by S. 57, *ibid.*

8. Substituted by Madras Act (XXIII of 1945).

Sec. 75.—Subordinate officers of municipality hold their office at pleasure and are not entitled to notice (except as is specially provided for by this Act) on framing of a charge before dismissal. They have no cause of action against the corporation for dismissal by the chairman. 42 I.C. 513=6 L. W. 284; 141 I.C. 768=26 S.L.R. 469=1936 S. 93 on appeal from 26 S.L.R. 435; 174 I.C. 78=A.I.R. 1938 All. 57. The ordinary law of master and servant does not apply to such a case. (*Ibid.*) An allegation that the procedure laid down by the Act has not been observed affords a cause of action. But then the jurisdiction of the Court is only confined to that question. 141 I.C. 768=26 S.L.R. 469=1933 S. 93.

Dismissal from service by the Standing Committee—Court whether can interfere with dismissal.—The Standing Committee

Power to grant leave to establishment.

76. The [1][executive authority] may grant leave to all municipal officers and servants.

Power of (State) Government to appoint health officers and municipal engineers.

[2][**76-A.** Notwithstanding anything contained in this Act—

(a) the [3][State Government] may, by notification, take power to appoint the health officer [4][the municipal engineer, the municipal electrical engineer or the Assistant municipal engineer] in the case of any municipality or class of municipalities;

(b) the [3][State Government] may recover from the municipal council concerned the whole or such proportion of the salary and allowances paid to any such health officer, [5][engineer, electrical engineer [6](or assistant electrical engineer)] and such contribution towards his leave allowances, pension and provident fund as the [3][State Government] may, by general or special order, determine;

LEG. REF.

1. These words were substituted for the word "Chairman" by S. 17 (1) of the Madras District Municipalities (Amend-

2. This section was inserted by S. 2 of the Madras District Municipalities (Third Amendment) Act, 1933 (Madras Act XII of 1933).

3. The words "Provincial Government" ment) Act, 1933, (Madras Act XV of 1933). were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word "Provincial", the word "State" was substituted by A.L.O., 1950.

4. These words were substituted for the words 'or the municipal engineer' by S. 2 (vi) of the Madras District Municipalities and Local Boards (Amendment) Act, 1938 (Madras Act XVIII of 1938). *See also* Madras Act XXIII of 1945.

5. These words were substituted for the words 'or engineer' by S. 2 (vii) of Act XVIII of 1938. *See also* Madras Act XXIII of 1945.

6. Substituted by Madras Act XXIII of 1945.

---

is constituted by the statute to be the domestic tribunal and it was never intended by the statute to retain the ordinary law regulating the dismissal of a servant by his master; the power is however subject to the following limitations; (1) there must be evidence before the domestic judge for a reasonable finding; (2) the enquiry must be conducted in accordance with the principles of natural justice; and (3) the decision must not be based on purely capricious grounds. The Court cannot review the decision of the Standing Committee apart from the question whether the requirements of natural justice have been complied with. 126 I.C. 324 =32 Bom.L.R. 463=1930 Bom. 320. The power of dismissal so far as persons under Municipalities Act are concerned, is exercisable by the executive officer without any qualification whatever and no suit for damages for wrongful dismissal will lie. Such a right might arise in case there was a special contract between the parties or in case there was special statutory provision. I.L.R. (1939) All. 231=1939 A.L.J. 9= A.I.R. 1939 All. 310. There is no provision in the Punjab Municipal Act or in the Executive Officers Act nor in any rule or bye-law made under these enactments which can authorize the Executive Officer or the President of the Municipal Committee to arrogate to themselves the powers of removing a municipal employee. 178 I.C. 153= A.I.R. 1938 Lah. 282. R. 7 of the rules framed under S. 25 of the C. P. Municipalities Act, makes no provision for representation by Council on behalf of the Committee, but only for the employee in special cases. As such, any payment made to Council without previous sanction, for representing the committee before the Local Government in an appeal by a dismissed employee of the Municipality is not covered by any provision of the Act or rules thereunder and as such is recoverable from those who were responsible for its expenditure. 184 I.C. 494=A. I. R. 1939 Nag. 247. There is certainly force in the contention that S. 71 of the U.P. Municipalities Act of 1916 impliedly empowers a Municipal Board to discharge servants whose services are no longer required. But apart altogether from S. 71, a Municipal Board, like any other employer of labour, is entitled to discharge servants it no longer desires to employ. The discharge of servants whose offices have been abolished as a matter of policy is clearly a step which a Municipal Board is entitled to take in the conduct of its business. When a Municipal Board discharges or dispenses with the services of Secretary by a special resolution passed at a special meeting of the Board, the Secretary whose services have been thus dispensed with is not entitled to maintain a suit for a declaration that he has not been legally dismissed on the ground that the

(c) the [1][State Government] may, at any time, withdraw any such health officer [2][engineer, electrical engineer [2-a](or assistant electrical engineer)] and appoint another in his place; and

(d) the [1][State Government] shall have power to regulate the methods of recruitment, conditions of service, pay and allowances and discipline and conduct of the health officers[3] [engineers, electrical engineers [2-a]and assistant electrical engineers] appointed under clause (a).]

Special provisions regarding Government servants lent to council.

77. (1) The [1][State Government] may, on the application of any municipal council, place the services of any Government servant [4][employed in connexion with the affairs of the Province] at the disposal of the council to be employed by it for the purposes of this Act. The council shall pay any Government servant so employed the salary he may be entitled to receive under the rules of the branch of Government service to which he belongs, and shall [4][also make any contribution towards the pension and leave allowances of such servant as may be required, by the conditions of his service under the [5][Government], to be paid by him or on his behalf].

(2) If such servant, while employed by the municipal council or if any other servant of the council does any work for [1][the State Government], the [1][State Government] shall contribute to the Municipal Fund so much of the salary of such servant as the [1][State Government] may consider to be an equivalent for such work.

[(3) No Government servant employed by a municipal council shall be dismissed or removed from such employment—

(a) in case he is employed as a medical officer, without the consent of the [1][State Government]; and

(b) in any other case, without the consent of the [1][State Government] or until three months' notice in writing to that effect shall have been given to the chief controlling authority of the branch of the Government service to which the Government servant belongs.] (*Substituted by Madras Act XII of* 1942).

(4) No Government servant employed by a municipal council shall, except in cases of emergency, be withdrawn from the service of the council without the consent of the municipal council, unless and until the [1][State Government] shall have given three months' notice in writing to that effect to the municipal council or unless some other Government servant has been deputed to replace the one withdrawn.

LEG. REF.

1. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; the word "State" was substituted for the word "Provincial" by A.L.O., 1950.

2. These words were substituted for the words 'or engineer' by S. 2 (vii) of the Madras District Municipalities and Local Boards (Amendment) Act, 1938 (Madras Act XVIII of 1938).

2-a. Substituted by Madras Act XXIII of 1945.

3. These words were substituted for the words 'and engineers' by S. 2 (viii) of Act XVIII of 1938.

4. These words were substituted by Madras Act XVIII of 1938.

5. This word was substituted for the word 'Crown' by the A.O., 1950.

---

resolution in question is illegal or *ultra vires*, and that he is still in the employment or service of the Board and entitled to continue drawing his salary. The Court has no jurisdiction to force an employer of labour to retain the services of a servant he no longer wishes to employ. Though the discharged servant may have a right of suit for damages for wrongful dismissal, a suit for a declaration that he has not been dismissed and that he is still in his master's employment and entitled to claim the continuance of his salary from his employer is entirely misconceived. I.L.R. (1937) All. 434=169 I.C. 390=1937 A.L.J. 153=A. I.R. 1937 All. 264.

(5) Government servants employed by municipal councils shall be entitled to leave and other privileges in accordance with the regulations applicable to the department of the general administration to which they belong.

Provincialization of any class of municipal officers or servants.

[1][77-A. (1) Notwithstanding anything contained in this Act, the [2][State Government], may, by notification, constitute any class of officers or servants of municipal council into a municipal service for the Presidency of Madras:

Provided that no notification shall be issued under this sub-section—

(i) unless all the municipal councils constituted under this Act have been consulted in respect thereof, and

(ii) unless a majority of the councils so consulted have passed a resolution supporting such issue.

(2) Upon the issue of a notification under sub-section (1), the [2][State Government] shall have power, subject to the provisions of section 305-A, to make rules to regulate the classification, methods of recruitment, conditions of service, pay and allowances and discipline and conduct of the municipal service thereby constituted and such rules may vest jurisdiction in relation to such service in the [2][State Government] or in such other authority or authorities as may be prescribed therein.]

Management of certain municipal colleges and appointment of staff, etc. thereto.

[77-B. Notwithstanding anything contained in this Act, where a college maintained by a municipal council is affiliated to a University, the management of the college shall, if the laws of the University so required, vest in a governing body constituted in accordance with such laws and such governing body shall exercise in relation to the members of the teaching staff and the establishment of the college all powers of appointment, control and punishment which by or under the Act vest in the committee referred to in section 73 or in the executive authority.] (*Inserted by Madras Act XIX of* 1944, *re-enacted permanently by Madras Act VIII of* 1948).

PART III.

CHAPTER VI.

TAXATION AND FINANCE.

Enumeration of ordinary taxes and powers of control of [2][State Government].

78. (1) Every municipal council may levy

(a) a property tax;

[3][(b)] a profession tax;

[3][(c)] a tax on carriages and animals;

LEG. REF.

1. This section was added by section 58 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word "Provincial", the word "State" was substituted by A.L.O., 1950.

3. Clause (*b*) was omitted and clauses (*c*) to (*f*) were re-lettered as (*b*) to (*e*) respectively by section 59 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

Sec. 78.—The tax payable as property tax is not in the nature of a fixed levy on the ownership of property but is in reality and substance a tax on 'rental' connected with and dependent upon occupation of the premises, whether by the owner himself or by a tenant under him. The provision was apparently with a view to provide a convenient mode for realization of the house tax by the Municipal Committee. The amount of tax in such cases does not form part of the annual value of the property. 131 I.C. 193=1931 Lah. 320 (2) (F.B.); 4 Lah. 442=1924 Lah. 361 (F.B.). The expression "*person carrying on a trade*" cannot include a salaried clerk. A person can only be said to be carrying on trade when he is working for his own profit and

[1][(d)] a tax on carts;

1. Vide footnote No. 3, Page 75.

not for a salary. 46 A. 685=82 I.C. 89 =22 A.L.J. 599. The income derived by a spiritual leader from offerings made by his disciples is income derived from a profession or at least a calling within the meaning of the Act. 68 I.C. 996=1923 Lah. 127. The Act being intended to make better provision for organisation and administration of municipalities, any tax imposed as a means to this is within its purpose. 1930 Nag. 157=127 I.C. 337. Tax—Rent for Municipal building is not a tax and cannot be recovered by summary procedure by Magistrate. 1923 Nag. 264=19 N. L. R. 122=73 I.C. 52. Rent recoverable under a contract is not tax. 184 I.C. 16=A. I. R. 1939 Pesh. 40. Taxes cannot be treated as being in the same category as licence fees under the Act. The one is being paid for permission granted while the other is not paid for any such permission. 1930 M. 55=57 M.L.J. 71=52 M. 764=121 I.C. 849. A suit for the recovery of amount due on account of house tax and water tax, is one to enforce payment of money charged upon immovable property within the meaning of Art. 132, Limitation Act. 1930 A. 530=123 I.C. 379. In a Municipality to which the Act applies, a tax leviable by the year is leviable by the calendar year from the 1st January to the 31st December. 4 P.R. 1898. As to recovery of interest on tax, *see* 20 N.L.J. 145= I.L.R. (1938) N. 482=1938 N. 119.

Market—Assessment of Property tax—Items which could not properly be included—Inclusion—Validity of assessment. *See* (1959) 2 M.L.J. 92.

Secs. 78 *and* 81.—Scope—"Exclusively used for agricultural purposes"—Meaning of—Erroneous or incorrect mode of assessment—Validity—Jurisdiction of Civil Court to adjudication—S. 354. An examination of the provisions of Ss. 78 and 81 of the Madras District Municipalities Act would show that where the property is land or building or both, the tax shall be computed on percentage basis (to be determined by the Municipal Council) based upon the annual rental value. Section 81 (4) speaks of the levy of tax on lands which are being used exclusively for agricultural purposes. With regard to such lands the tax is to be computed on the annual rental value of such lands as calculated in accordance with the provisions of S. 79 of the Madras Local Boards Act, 1920. These two sub-sections viz., 81 (2) and 81 (4) are clear in that the former relates to lands not used for agricultural purposes. The words used in sub-section (3) of S. 81 are 'the Municipal Council in the case of lands which are not used exclusively for agricultural purposes and are not occupied by or adjacent, or appurtenant to buildings. Express and unambiguous language is necessary in order to impose a tax. In a taxing statute there is no room for any intendment. Likewise there can be no presumption as to a tax. The burden lies on those seeking to enforce it to show that the words are clear and unambiguous to charge a subject. If a person sought to be taxed comes within the letter of the law then alone could he be taxed. In case of doubt, a provision of law would be construed against the Government and in favour of the tax-payer. While it is the duty of the Court to see that public revenue is safeguarded, it is equally the duty of the court to see that a citizen is not required to pay more than what the law requires him to pay. If the words of the statute are capable of two otherwise equally opposite constructions, the construction, to be adopted should be that in favour of the tax-payer. The words 'exclusive use' would mean that the land or the site is being used for agricultural purposes only that is to say, the purpose for which it is used is only agriculture. It does not depend whether all the site or the land is being used for agriculture alone. Where the mode of assessment is found to be erroneous or based on an incorrect basis, the civil Court can always declare the assessment to be invalid and *ultra vires.* (1959) 2 An. W.R. 492.

Jurisdiction of Civil Court in Matters of Taxation.—Legality of Municipal tax can be questioned in Civil Court. 74 P. L. R. 1918=44 I.C. 910. *See also* 18 N. L. R. 121=1922 N. 10; 57 All. 655=1935 All. 153. No doubt the Civil Court cannot interfere with a taxation which is imposed within the power conferred by the law, but where under the clear provision of the law a particular class of holding is exempted from taxation unless certain things are done without which the Municipality has no jurisdiction to proceed with the assessment there is absolute want of jurisdiction and the Civil Court can and must intervene in such a case. 148 I.C. 918=1934 Pat. 83. An assessment beyond statutory provision is *ultra vires* and the question can be opened by a Civil Court. 23 C.W.N. 475=29 C.L. J. 379=50 I.C. 394. Suit to recover illegal tax levied and realized lies in Civil Court. 1938 A. 66=1937 A.W.R. 1135= 1937 A.L.J. 1286. *See also* 20 N.L.J. 145=1938 N. 119. Also where the question turns purely on the terms of the contract between the parties. 37 P.L.R. 289= 1935 Lah. 632. Civil Court can consider legality of tax in spite of its being imposed in pursuance of a Municipal notification in Gazette. 1930 Nag. 153=122 I.C. 691; 75 I.C. 737=1924 Lah. 619. While mere erroneous exercise of judgment is not reviewable by the Civil Court, any excess of jurisdiction makes the act liable to challenge in

[1][(e) (*Omitted*).]

(2) A hill station municipal council may also levy a tax on servants.

(3) Any resolution of a municipal council determining to levy a tax [2][. . . .] shall specify the rate at which any such tax [2][. . . .] shall be levied and the date from which it shall be levied:

Provided that before [3][passing] a resolution imposing a tax [2][. . .] for the first time or increasing the rate of an existing tax [2][. . .], the council [4][shall publish a notice in at least one vernacular newspaper, on the notice board of the municipal office and in such other places within municipal limits as may be specified by the council and by beat of drum, of its intention] fix a reasonable period not being less than one month for submission of objections and consider the objections, if any, received within the period specified:

Provided also that any resolution abolishing an existing tax [2][. . .] or reducing the rate at which a tax [2][. . . . .] is levied shall be immediately reported to the [5][State Government] and in municipalities which have an outstanding loan either from the Government or from the public or any other local body such abolition or reduction shall not be carried into effect without the sanction of the [5][State Government]:

LEG. REF.

1. This clause was omitted by Schedule I to the Madras Motor Vehicles Taxation Act, 1931 (Madras Act III of 1931).
2. The words 'or toll' were omitted by Schedule I, ibid.
3. This word was substituted for the words 'carrying into effect' by section 59 (ii) (a) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).
4. Substituted by Madras Act XVIII of 1944.
5. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; the word "State was substituted for the word "Povincial" by A.L.O., 1950.

---

such Court. Jurisdiction of Court depends upon the allegations in the plaint. But the plaint must make distinct allegations of fact or law as to how the act objected to is *ultra vires*. 18 N.L.R. 121=65 I.C. 532. As to jurisdiction of Small Cause Court in respect of dues from the farmer of a market, see 16 Pat. L.T. 175=1935 P. 114. A tax assessed by the Municipal Committee cannot be disputed in any other way than that laid down in the Municipal Act. It does not matter whether the assessment is illegal or *ultra vires* or not. Even if the assessment is illegal or *ultra vires* it is an assessment and the jurisdiction of the Civil Court is definitely barred. 16 Lah. 529=1934 Lah. 970. Bidder at auction of lease forfeiting his deposit; committee returning the deposit cannot subsequently recover it as having been wrongly paid. A.I.R. 1937 Lah. 771.

Profession Tax cannot be said to be due till the proper authority has assessed the same by the name of assessee being placed in the proper class. 52 M. 866=1930 M. 200=57 M.L.J. 536=122 I.C. 360. Profession tax paid under the Municipal Act cannot be allowed as proper deduction from the taxable income as an expenditure incurred solely for the purposes of the profession of the assessees within the meaning of S. 11 of the Income-tax Act. 49 M. 296=1926 M. 368 =50 M.L.J. 176=92 I.C. 943. Profession-tax paid under protest—Suit for refund —Plea that amount appropriated under company tax not valid—Courts have no power to relieve from statutory obligations. 1926 M. 152=49 M.L.J. 542. The powers conferred on local bodies are on the understanding that they observe the conditions of the statute to which they owe their origin and Courts of Law have no power to relieve them from the statutory obligations imposed upon them. 22 L.W. 619=49 M.L.J. 542. See also 20 N.L.J. 145. A *"toll-gate kist"* is not a tax under S. 103 but it is "money due under a contract" under S. 92. Therefore a prosecution for such non-payment will not lie under S. 111 of the Act. 16 Cr. L.J. 702=30 I.C. 750. The chairman under rule 17 of the rules framed under the Act has only power of classification and no power to levy tax illegally. 109 I.C. 92. The fixing of municipal limits for the collection of an octroi tax is entirely a matter of discretion with the Municipal Committee. It is therefore competent for the committee to agree to exclude a certain area from the octroi limits on sale of sites in that area. 37 P.L.R. 289=1935 Lah. 632. A Municipal Committee entitled by the Punjab Government Notification No. 19192 to charge octroi on animals brought into town for slaughter can realise octroi on animals already slaughtered. A.I.R. 1937 Lah. 310. Where goods entrusted to a servant ostensibly pass through the terminal

[1][Provided also that where any resolution under this section has taken effect for a particular year no proposals to alter the rates or date fixed in such resolution so far as that year is concerned shall be taken into consideration by the Council.]

LEG. REF.

1. This proviso was added by section 59 (iv) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

---

tax post as belonging to and carried by the master, the Municipal Committee can call upon the latter to pay the deficiency in the payment of the terminal tax, if the servant has introduced the goods without paying full terminal tax by misrepresenting their weights, and the Magistrate can issue execution against the master under S. 81 of the Punjab Municipal Act. I.L.R. (1938) Lah. 251=177 I.C. 413=A.I.R. 1938 Lah. 627. The rules made by the Local Government for the assessment and collection of terminal tax in Dehra Dun Municipality under powers conferred by S. 296 of the U.P. Municipalities Act explain the word 'import' as 'the bringing of goods into' and the word literally also means practically the same thing. Hence when goods are brought into the municipal limits they become liable to be taxed and the fact that it is brought into the Municipal limits on its way to a place outside the limits cannot affect the question. 1939 A.L.J. 1030=A.I.R. 1939 All. 736. Water-tax is liable to be levied on buildings and lands so situated as to derive benefit from the works as they stand and not on lands which may be benefited if further connections were made. A notification sanctioned the imposition of water-tax on the rents of all houses and buildings "500 ft. from the *public water-mains*" Held, that the expression referred to the public watermains from which water can be drawn and not public water-mains absolutely closed and from which no one can benefit as it stands. 42 P.R. 1913=17 I.C. 149. The power conferred by a Special Act on a local authority to impose a particular tax for a particular purpose in a special manner does not oust the jurisdiction of Civil Courts to give relief against an illegality committed by that body under cover of statutory powers. A Civil Court has jurisdiction to determine the question whether the imposition of a tax is illegal and *ultra vires* and to give relief if a tax has been levied from a person who is not liable to pay the same. 74 P.L.R. 1918 =44 I.C. 910. As to jurisdiction of Small Cause Court to hear objections as to quantum of assessment or liability to assessment, see A.I.R. 1939 Cal. 706. As to education tax, see 1936 Mad. 857.

Refund of tax.—A statutory right of refund of tax cannot be curtailed by a bye-law. 126 I.C. 634=1930 Mad. 648. See also 80 I.C. 48=1925 Oudh 108; I.L.R. (1939) A. 477=1939 All. 519; 1939 All. 394=I.L.R. (1939) A. 345. A suit for the refund of certain licensing fees paid under protest in respect of certain *thelas* is barred under the provisions of the U.P. Municipal Act. 1939 A.W.R. (H.C.) 294 =A.I.R. 1939 All. 450. See also 1939 A.L.J. 897=1939 All. 623. Where an assessment has been made by the Municipal authorities in utter and flagrant disregard of the Municipalities Act, a person aggrieved by it, can maintain a suit against the municipality for a declaration that his property is not liable to assessment and for recovery of assessment paid. I.L.R. (1939) All. 345=A.I.R. 1939 All. 394=1939 A.L.J. 183. The refund of an amount recovered as a tax by the municipality, even if that amount was calculated on a wrong basis is governed by the rules made under S. 85 of the C.P. Municipalities Act. 184 I.C. 489=1939 N.L.J. 493=1940 N. 73.

Secs. 78 *and* 80.—Notification was published by a Municipal Council under S. 78 on the 16th October, 1920, stating that it was its intention to levy enhanced profession tax from 1st October, 1920, and objections were invited. Nothing further was done under the provisions of the Act until December, 1923, when the chairman issued a notification purporting to be under S. 80, levying professional tax and the same would take effect from 1st October, 1920. Held, that this notice was not a notice as contemplated by S. 80 as it did not say that the profession tax would be levied at an enhanced rate; and that therefore the levy of additional tax was *ultra vires*. 109 I.C. 92. A resolution in a meeting to the effect that the Local Government be asked for sanctioning the imposition of certain tax complies with the provisions of law and the mere fact that other business was conducted at the meeting does not make it any the less a meeting specially convened for the purpose or impair the validity of the resolution imposing the tax. 13 Pat. 693=15 P.L.T. 424=1934 Pat. 357. Where the notification issued by the Local Government to notify the imposition of a tax does not specify any date on which the tax is to come in force and the date which may by implication be taken to be the date specified is a date less than one month from the date of the notification, the tax imposed by the notification cannot be said to be imposed in accordance with the provisions of the Municipal Act. 1935 Lah. 980=160 I.C. 524.

Secs. 78 (3) *and* 80.—Added Area—Imposition of tax—Notification—Necessity—Frenchpet. See (1953) 1 M.L.J. 535, cited under S. 4 (1) *supra*.

[78-A. In every municipality, a duty shall be levied on certain transfers of property in accordance with the provisions hereinafter contained in this Act.] (*Inserted by Madras Act XX of* 1945, *re-enacted permanently by Madras Act VII of* 1948).

Duty on transfers of property.

Special taxation.

79. With the previous sanction of the [1][State Government] and the [2][Central Government]—

LEG.. REF.

1. These words were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; word "State" was substituted for the word "Provincial" by A.L.O., 1950.

2. These words were substituted for the words 'Governor-General in Council' by paragraph 4 (1), of the Government of India (Adaptation of India Laws) order, 1937.

Sec. 79.—The sanction of Government is only necessary to make such an alteration in the rate, tax, etc., that were realised under the old Act as to remove them altogether or change one kind of rate to another. It is not necessary for the increase of the rate itself from As. 8 per cent. to Re. 1 per cent. 36 C.W.N. 906.

Sec. 80.—See 22 L.W. 619=1926 Mad. 152=49 M.L.J. 542. In the absence of a proper notification the levy of professional tax at an enhanced rate is illegal. 109 I.C. 92. A Municipality published a notification purporting to be under S. 80 as follows:—"Profession-tax will be levied at the maximum rates in Sch. IV of Act V of 1920". Held, it did not comply with the requirement of S. 80, as it ought to mention the exact rate at which the tax was going to be levied. 1926 Mad. 800=50 M.L.J. 556. Where the Municipality had only issued a preliminary notification under S. 78 intimating its intention to impose a tax and inviting objections or suggestions but no final notification as contemplated by S. 80 was ever made specifying the rate at which the tax will be levied, the Municipality has no jurisdiction to levy the tax. 34 L.W. 911 =1932 M. 1=62 M.L.J. 175 (F.B.). A notification under S. 80 in pursuance of a decision to levy profession-tax which merely states that "profession-tax at the maximum rates detailed in rule 17, Sch. IV" will be levied does not sufficiently comply with the requirements of the section. The rates must be mentioned in the notification itself. People upon whom tax is about to be levied should be enabled from the notification itself to understand what the tax is and its rate and they should not be driven to look into the Schedule of the Act to gain that information. The fact that rule 17 is mentioned cannot enable people to *find out* the rates. 159 I.C. 53=1935 M.W.N. 1087=42 L.W. 684.

Publication in the District Gazette—Not a pre-requisite necessity.—Where the resolution to increase the tax from 1st April was passed a few days before but it was published in the District Gazette only on the 5th April the imposition of the tax is not on that account invalid. The publication in the Gazette before the date of levy of the new tax though desirable, is not a vital and pre-requisite necessity in the sense that if the publication does not precede the date on which the tax is to come into force, the levy of tax from that date would be illegal. 55 M. 207=34 L.W. 719 =1931 Mad. 808=61 M.L.J. 642.

Cases under other Municipalities Acts.—Under S. 67 (8), C. P. Municipalities Act, a notification of the imposition of a tax is conclusive evidence that the tax has been imposed in accordance with the provisions of the Act. Therefore under S. 4, Evidence Act, the Court must regard it as proved that the tax was imposed in accordance with the provisions of the Act and must not allow evidence to be given for the purpose of disproving it. I.L.R. (1937) Nag. 414=170 I.C. 133=A.I.R. 1937 Nag. 168. Where the premises and hereditaments belonging to an Electric Supply Co., are sought to be assessed by the Municipal Committee, the assessment should be made without taking into account any value in respect of the overhead mains, cables or wires. The overhead mains are not assessable under the Act at all. 14 Rang. 649=166 I.C. 512=A.I.R. 1937 Rang. 1 (S.B.). S. 99 of the Bihar Municipal Act does not prescribe the procedure which as a matter of course and on all occasions must be followed by municipalities before assessment is made. It comes into operation only when the question arises of how the words in Cl. (9) of S. 3 'held under one title or agreement' are to be interpreted. Then the commissioners are to decide at a meeting what tests shall be applied. 16 Pat. 662=19 Pat.L.T. 91=A.I.R. 1938 Pat. 177. Where an assessee disputed his occupation of any holding or his liability to be assessed, it is necessary under S. 116 of the Bihar Municipal Act that he should apply to the Commissioners for review of the assessment or exemption: and S. 119 of the Act provides that no objection shall be taken to any assessment in any other manner than that provided by the Act. 16 Pat. 662=19 Pat.L.T. 91=A.I.R. 1938 Pat. 177. The word 'exaction' in S. 76, Punjab Municipal Act, does not connote a mere 'demand' of an amount which is sought to be illegally taken, but means also

[1][(a) . . . .].

(b) a tax on persons [2][travelling by railway from any station notified under section 116 in or near the municipaltiy] shall be levied by the council of any municipality which is resorted to by pilgrims:

[3][Provided that no portion of the proceeds of any tax levied under clause (b) shall be expended for purposes other than making arrangements for the health and comfort of the pilgrims or the improvement or development of the municipal area.]

Notification of new taxes.

80. When a municipal council shall have determined subject to the provisions of sections 78 and 79 to levy any tax [4][. . .] for the first time or at a new rate, the [5][executive authority] shall forthwith publish a notification in the district gazette and by beat of drum specifying the rate at which [6][the date from which and the period of levy, if any, for which such tax [4][. . .] shall be levied].

Saving for certain provisions of the Constitution.

[7][80-A. Nothing in this part of this Act shall authorize a municipal council to levy any tax which the [8][State] Legislature has no power to impose in the [8][State] under the Government of India Act, 1935.

---

1. Clause (a) was omitted by the Second Schedule of A.I.L.O., 1937.
2. These words were substituted for the words 'entering or leaving the municipality by railway' by section 60 (ii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).
3. This proviso was added by section 60 (iii), ibid.
4. The words 'or toll' were omitted by Schedule I to the Madras Motor Vehicles Taxation Act, 1931 (Madras Act III of 1931).
5. These words were substituted for the word 'chairman' by section 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).
6. These words were substituted for the words 'the tax or toll will be levied from a day to be specified in the notification' by section 61 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).
7. This section was inserted by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.
8. Substituted by A.L.O., 1950.

---

the 'demand and wresting' of such an amount. Where, therefore, a District Board imposed a 'haisiat tax' on a person, who filed a suit for a declaration that the Board had no authority to impose such taxation and the tax was not realized. S. 76 was inapplicable and the jurisdiction of the Civil Court was not barred. A.I.R. 1937 Lah. 319. Extension of Municipal limits creates liability to assessment on new and entire holdings. 46 C. 84=23 C.W.N. 611=51 I.C. 993.

Evidence.—A notification which is not necessary under the Act, shall not be conclusive evidence that the tax was imposed in accordance with the provisions of the Act. 100 I.C. 426=1927 Lah. 140. A notification of the imposition of tax issued by Government is conclusive proof of the fact that the tax was imposed in accordance with the provisions of the Act. Where such notification has been issued Court cannot inquire into validity of proceedings. 127 I.C. 337=1930 N. 157. The appellants instituted two suits against the respondent committee disputing the validity of a tax purporting to be imposed under the Central Provinces Municipalities Act, 1903, on the trade of ginning and pressing cotton by means of steam or mechanical process. Sub-S. (1) of S. 39 of the said Act provides as follows: 'A committee may resolve at a special meeting to propose the imposition of any tax for purposes of this Act; and sub-S. (2) provides that 'where a resolution has been passed under sub-S. (1) the committee shall publish........a notice defining.... the amount of the tax to be imposed.' The respondent committee published a notice defining the amount or rate of tax to be imposed on the trade of ginning and pressing cotton by means of steam or mechanical process. The Judicial Committee remanded the case for the respondent committee to let in evidence as to the contents of the resolution passed at the special meeting of the committee. Held, on the evidence, that the respondent committee had failed to prove that the amount or rate of tax had been resolved upon at the special meeting and that the tax had therefore not been validly imposed. Decision of the Judicial Commissioner of the Central Provinces reversed. 64 I.A. 118 =(1937) 2 M.L.J. 792 (P.C.)].

Provided that a Municipal Council which immediately before the commencement of *(the Constitution) was lawfully levying any such tax under this part of this Act as then in force, may continue to levy that tax until provision to the contary is made by (Parliament by law).*

The Property tax.

Description and classes of property tax.

81. [1][(1) If the council by a resolution determines that a property tax shall be levied, such tax shall be levied on all buildings and lands within municipal limits save those exempted by or under this Act or any other law. The property tax may comprise—

(a) a tax for general purposes;

LEG. REF.

*Substituted by A.L.O., 1950.

1. This sub-section was substituted for the original sub-section by S. 62 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

Presumption of accuracy of assessment list. See 1937 A.W.R. 1135=1937 A.L. J. 1286=1938 A. 66.

Sec. 81.—Legality of levy of tax for drainage and water works to come into existence in the future. See 1936 Mad. 857. The words 'lands and buildings' are large enough to cover all land in the Municipality and notwithstanding the provision allowing the Municipal Council to levy taxes at a special rate, the Council has no power to levy a tax on any land exceeding the maximum rate as specified in the Act. 18 M. 310. Land, forming the compound of a house and let with it, is appropriated to the house, and it is none the less so, if pecuniary benefit is derived from it as by cutting fire-wood, grazing cattle, or carrying on quarrying work. (Ibid.) The Municipal Council, Cuddappah, assessed the Madras and Southern-Mahratta Railway Company to property tax in respect of certain vacant sites belonging to the Railway Company, purporting to do so under the Madras District Municipalities Act (V of 1920), whereby Municipal Councils are entitled to levy property tax under S. 81 of the Act. There was no notification issued by the Government of India after Madras Act V of 1920 came into force; and all that the Municipal Council was able to rely upon was a notification of 24th November, 1911, which had been issued under the previous Act and which declared the railway administration liable to pay 'house, land, and water taxes'. Held, that the taxes in respect of which the notification of 1911 was issued were substantially different from the 'property tax' mentioned in S. 81 of the Act of 1920, and as the rates were different, and the incidence was also different the notification of 1911 did not justify the levy of the tax in question. Taxing enactments should be strictly construed and the right to tax should be clearly established. Conditions precedent to the imposition of any tax should be strictly complied with. Per the Chief Justice.—Quaere, whether a notification in the terms of that of 24—11—1911 was not ultra vires of the statute; in other words, whether the mere notification of categories of taxation sanctioned without specific reference to the section of the District Municipalities Act which purports to impose such a tax is not ultra vires of the Government of India. 52 Mad. 779 =1929 Mad. 746=57 M.L.J. 471. The owner's share of the Municipal tax payable as property tax is not a tenant's tax. It is a liability of the owner and the discharge thereof is a benefit to the owner. Whether it is paid by the landlord himself or by the tenant under agreement with the landlord it cannot be deducted in computing the annual value of the premises for the purpose of income-tax. 60 C. 357 =36 C.W.N. 1144=1932 Cal. 886 (S.B.).

Sec. 81 (1) (3) and (4).—In order that certain land might come within the expression 'lands used exclusively for agricultural purposes' under S. 81 (4) of the Madras District Municipalities Act, the land must have been used exclusively for agricultural purposes and it is not sufficient if it is merely capable of being used exclusively for agricultural purposes. Where the land in question which was situate within the municipal limits and was owned by the landholder was previously in the possession of a tenant, and the landholder having obtained a decree got possession thereof in September, 1939, but the land itself was neither let out nor cultivated, the municipality sought to tax the said land during the revision in 1940:

Held that the land could not be said to be used for agricultural purposes at the time of the revision of assessment and that the Municipality was entitled to levy property tax in respect thereof: 59 L.W. 183=A.I.R. 1946 Mad. 332=(1946) 1 M.

(b) a water and drainage tax to provide for expenses connected with the construction, maintenance, repair, extension or improvement of water or drainage works heretofore provided or hereafter to be provided;

(c) a lighting tax to provide for expenses connected with the lighting of the municipality by gas or electricity;

(d) a scavenging tax to provide for expenses connected with the removal of rubbish, filth or the carcasses of animals from provate premises; and

(e) a railway tax to be used solely for or to further the construction and maintenance of railways:

Provided that where the water and drainage tax is levied, the municipal council shall declare what proportion of the tax is levied in respect of water works and the remainder shall be deemed to be levied in respect of drainage works and the proportion so declared shall also be specified in the notification published under section 80:

Provided further that the railway tax shall not be levied unless its levy is determined by a resolution of the Municipal council supported by not less than three-fourths of the members present at a meeting specially convened in that behalf, such resolution being confirmed after a period of six months by a like majority at a like meeting and sanctioned by the [1][State Government].

(2) [2][Save as otherwise provided in this Act, these taxes] shall be levied at such percentages of the annual value of [3][lands or buildings or both] as may be fixed by the municipal council, subject to the provisions of section 78.

[4][(3) [5][(a)] [6][Save as otherwise provided in clause (b) the municipal council shall, in the case of lands] which are not used exclusively for agricultural purposes and are not occupied by, or adjacent and appurtenant to, buildings, levy these taxes at such percentages of the capital value of such lands or at such rates with reference to the extent of such lands as it may fix:

LEG. REF.

1. The words 'Provincial Government' were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; the word 'State' was substituted for the word 'Provincial' by A. L.O., 1950.

2. These words were substituted for the words 'These taxes' by S. 62 (ii) (a) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. These words were substituted for the words 'lands and buildings' by S. 62 (ii) (b) ibid.

4. These sub-Ss. 3 & 4 were inserted by S. 62 (iii) ibid.

5. In S. 81, Cl. (3) the original clause renumbered as sub-Cl. (a) and sub-Cl. (b) added by Madras Act VI of 1946, re-enacted permanently by Madras Act VII of 1948.

6. The words within brackets were substituted by Madras Act VI of 1946.

L.J. 138. In consequence of the amendment of S. 83 (1) (c) of the Madras District Municipalities Act by Madras Act XXI of 1939, a Municipal Council amended the assessment register of the Municipality on 30—9—1939, by inserting an entry in it with regard to a house leased to the Municipal Council for the purpose of a school and on 2—10—1939, issued a demand notice for the payment of the tax in respect of the half-year commencing 1—4—1939. The owner of the house brought a suit for a declaration that the levy and collection of tax in pursuance of the demand was illegal and for recovery of the tax collected with interest. Held, that the executive authority had, on the day when it amended the register, the right to make the amendment under R. 8 (2) of the Taxation and Finance Rules set forth in Schedule IV to the Act, and, by virtue of that sub-rule, the amendment had to be regarded as having taken effect on the first day of that half-year. The provision was mandatory. The proviso to sub-R. (2) did not apply to the case because no notice of demand for that half-year had previous-

Provided that such percentages or rates shall not exceed the maxima, if any, fixed by the [1][State Government] and that the capital value of such lands shall be determined in such manner as may be prescribed].

[2][(b) In the case of railway lands which are not used exclusively for agricultural purposes and are not occupied by, or adjacent and appurtenant to, buildings, the municipal council shall levy these taxes on the annual value of such lands, and the [1][State Government] shall have power to make rules regarding the manner in which, the person or persons by whom and the intervals at which, the annual value of such lands shall be estimated or revised, and they may also by such rules, restrict or modify the application of the provisions contained in Schedule IV to such lands.]

[3][(4) [4](a) The municipal council shall in the case of lands used exclusively for agricultural purposes, levy these taxes at such proportions

---

LEG. REF.

1. The words 'Provincial Government' were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; the word 'State' was substituted for the word 'Provincial' by A.L.O., 1950.

2. Vide footnote 5 on page 82.

3. Vide footnote 4 at p. 82.

4. This clause was substituted by section 2 (ii) of the Madras District Municipalities (Amendment) Act, 1955 (Madras Act XX of 1955 for original clause (a) of sub-section (4)).

---

ly been issued. It therefore followed that the demand made by the Municipal Council was valid. 58 L.W. 561=1945 M.W.N. 684=A.I.R. 1946 Mad. 101=(1945) 2 M.L.J. 425.

Sec. 81 (2) and (4): Applicability—Tax on agricultural land.—Sub-S. (2) of S. 81 will come into play only in cases which are not governed by any other specific provision of law. The 'word' in sub-S. (4) does not confer the municipality absolute power to the municipality to choose either of the modes specified in sub-Ss. (2) and (4). The Municipality cannot disregard this provision of law in regard to lands used exclusively for agricultural purposes and to seek the mode of computation enunciated in sub-S. (2) [(1949) 1 M. L.J. 508, dissented. 71 I.A. 113=(1945) Mad. 1=(1944) 2 M.L.J. 25, explained.] When there are two provisions in respect of a subject a general one and a specific one, the former must yield to the latter and the latter specific provision will prevail. (1958) 2 An.W.R. 559=1959 Andh. Pra. 1.

Scope of sub-Ss. (1) and (2)—Jurisdiction of Civil Courts.—The Civil Court has no jurisdiction to question the propriety of the resolution of the Municipality, either in fixing the capital value or in fixing the percentage of tax leviable thereon. These are all matters exclusively within the province of the municipality to determine which exclusive power has been conferred on the municipality by statute. (1958) 2 An.W. R. 466.

Sec. 81 (3) and (4)—'Agricultural land'—Land covered by casuarina tope—Cultivation of casuarina tope—If agriculture.—Land covered by a casuarina plantation is agricultural land for purposes of assessment to property tax under S. 81 (3) and (4) of the Madras District Municipalities Act. 'Agriculture' in S. 81 (3) does not mean agriculture in the narrow sense of the word but denotes land which is cultivated or used for an agricultural purpose as distinguished from land which is not so used or covered with any crop, and therefore includes the cultivation of a casuarina tope. A.I.R. 1946 Mad. 143=(1945) 2 M.L.J. 315.

Secs. 81 and 84.—Applicability—Vacant site with shrubs of spontaneous growth—Leaves thereof used for manure—Assessment to tax—Permissibility. S. 81 (4) is not confined to cultivable or agricultural land. It applies to land exclusively used for agricultural purposes. Where a vacant site is covered with shrubs of spontaneous growth, the dried leaves whereof are collected and used as fuel and the green leaves are used as bedding for cattle and as manure for cultivable lands, it cannot be said that the land is used exclusively for agricultural purposes. The assessment of such land to tax cannot be attacked as invalid. See 62 L.W. 801=1949 M.W.N. 817=1950 Mad. 222=(1949) 2 M. L. J. 629.

Secs. 81 and 83.—Levy of property tax—Property subsequently gifted to educational institution and used as such—Refund of part of tax—Right to.—Where subsequent to the levy of property tax under the Madras District Municipalities Act but during the same half-year, in which the tax has been levied, the owner makes a gift of the property to an educational institution, there is no scope for refund of the

as it may fix, of the annual value of such lands as calculated in accordance with the provisions of section 79 of the Madras District Boards Act, 1920 (Madras Act XIV of 1920).

Provided that the proportion shall not exceed the maximum, if any, fixed by the State Government.]

(b) If such lands be occupied by tenants, the municipal council shall levy the taxes in equal shares, from the landholder and the tenant respectively.

Levy of property tax on a direction by Government.

[1][81-A. (1) The *[State Government] may by order published in the Official Gazette, direct any municipal Council to levy the property tax referred to in sub-section (1) of section 78 or any class of such tax, at such rate and with effect from such date (not being earlier than the first day of the half-year immediately following that in which the order is published) as may be specified in the order.

(2) When an order under sub-section (1) has been published, the provisions of this Act relating to property tax shall apply as if the municipal council had on the date of publication of such order by resolution determined to levy the tax at the rate and with effect from the date specified in the order and as if no other resolution of the Council under section 78 determining the rate at which and the date from which property tax shall be levied had taken effect.

(3) A municipal council shall not alter the rate at which the property tax or any class of such tax is levied in pursuance of an order under sub-

---

LEG. REF.

1. Inserted by Madras Act VIII of 1944, re-enacted permanently by Madras Act VII of 1948.

*Substituted by A.L.O., 1950.

proportionate share of the property tax merely because the building comes to be used as an educational institution subsequent to the levy of the tax. The levy is not for a half-year but in a half-year. Exemption can be claimed under S. 83 of the Madras District Municipalities Act only at the time of the levy if the building is used as an educational institution. Once it is levied the levy is complete and no refund can be had unless it is provided in the Act. 210 I.C. 9=1943 M.W.N. 99=56 L.W. 64=A.I.R. 1943 Mad. 377 (2)=(1943) 1 M.L.J. 150.

Secs. 81 and 83 (1) (a).—Construction —Power-house of Devasthanam — When exempt from property tax—Power house used for supplying electricity to shops and hotels and yielding profit to—Effect. I. L.R. (1941) Mad. 322=193 I.C. 34=A. I.R. 1941 Mad. 185.

Secs. 81 (3), 85 and 354.—Upto 1940 a house and site of about 4 acres had been assessed as if the whole of the 4 acres was adjacent and appurtenant to the house. In 1940, however, on the report of a special officer some 3 acres out of the 4 were excluded from the site held to be appurtenant to the house and were separately taxed. A suit to recover the tax in respect of this land was brought by the Municipality and the defendants maintained that they were not liable to pay the tax as the site was appurtenant to the house. Held, that where there is a mistake of fact the remedy is by way of an appeal to the Municipal Council and the Civil Court has no jurisdiction provided the provisions of the Act have been in substance and effect complied with. Even if the site in question should have been held to be appurtenant to the house that is merely an error of fact in making the assessment. The assessment was one which the Municipality had power to make and there was no contravention of any express provisions of the Act and no mistaken view of any provision of the Act. It was not open to the civil Court to go into the question whether the assessment was correct or not. 1948 M.W.N. 513=(1948) 2 M.L.J. 111=1949 Mad. 189.

The appellant, a railway company, owned vacant sites within the Municipality, and these lands were sought to be assessed to general property tax on the strength of a Government notification which declared the company liable to tax. Under the instructions of the Local Government and at the instance of the appel-

section (1) or abolish such tax except with the previous sanction of the [*(State) Government.] (Inserted by Madras Act VIII of 1944.)

Method of assessment of property.

82. (1) Every building shall be assessed together with its site and other adjacent premises occupied as an appurtenance thereto unless the owner of the building is a different person from the owner of such site or premises.

LEG. REF.

*Substituted by A.L.O., 1950, for 'Provincial.'

lant company, a committee was convened and the committee fixed the capital value and the annual value of the lands. The municipal chairman who was the executive authority empowered to levy the tax adopted the value fixed by the committee and levied the tax on the annual value so arrived at. The company having paid the tax filed a suit for a refund on the ground that the tax had been illegally levied.

Held, (1) that the committee were satisfied that resort to the capital value method was the appropriate method in the case, and the rating authority could not therefore be said to have acted ultra vires its powers; (2) that the omission of the rule making authority to frame rules could not take away the right of the Municipal Council to levy tax at the rate mentioned in the notification under S. 81 (3) of the District Municipalities Act; (3) that though the committee which fixed the capital value had no legal status under the Act to make any assessment, since the appellant company asked for a committee, it could not object to the tax levied on the basis of the value fixed by the committee as being illegal; (4) that the provisions of the Act had in substance and in effect been complied with and therefore S. 354 (2) of the District Municipalities Act barred the suit. I.L.R. (1941) Mad. 897=199 I.C. 577=1941 M.W.N. 545=53 L. W. 616=A.I.R. 1941 Mad. 641=(1941) 2 M.L.J. 189.

Sec. 81 (4).—There is nothing in S. 81 (4) of the District Municipalities Act to prevent a Municipality from levying taxes on agricultural land under S. 81 (2); though the Municipality could very well have levied that tax on the annual value calculated on the basis of S. 81 (4). It is for the assessing authority, to decide, not for the assessee to tell the assessing authority, which of the two modes of assessment permitted by the statute the assessing authority should elect. S. 81 (4) provides merely an alternative method of levy. Decision of Byers, J., in S.A. Nos. 1025 of 1943 and 1026 of 1943 and obiter in (1944) 2 M.L.J. 25=L.R. 71 I.A. 113 (P.C.), relied on. (1949) 1 M.L.J. 508 =62 L.W. 270=1949 Mad. 827.

Secs. 81 (4) (b) and 86—'Owner'—Property tax — Liability of landholder—Holding in possession of occupancy ryots —Landholder's liability as owner.—S. 81 (4) (b) of the Madras District Municipalities Act contemplates an assessment on the landholder and the tenants. A landholder who has ryoti lands which are in the possession of occupancy ryots is an 'owner' as defined by S. 3 (17) of the Act and assessment is leviable on him under S. 86 of the Act. The idea underlying the Act is that a person who owns property is liable to assessment of property tax, and it is not necessary that he should own the entire interest in agricultural land. The Act itself makes a distinction between the interest of the landholder and the interest of the person who cultivates the land, be he a cultivating tenant or a tenant with permanent rights of occupancy. 58 L.W. 433=A.I.R. 1946 Mad. 31=(1945) 2 M.L.J. 244.

Sec. 82—Annual value — Rent fixed under Rent Control Act—Relevancy — Duty of municipality to take note of.—The fair rent fixed under the House Rent Control Act may and ordinarily should, be taken into consideration by the municipal authorities in computing the annual value under S. 82 but they are not bound to take such rent as necessarily the rent for which the premises may reasonably be expected to be let. 68 L.W. 583=(1955) 2 M.L.J. 369=1956 Mad. 49, following 1951 Bom. 320. See however, (1955) 2 M.L.J. 467, which holds that for the purpose of ascertaining the reasonableness of the rental value, the municipality should not be guided by the fair rent that may be fixed by the Rent Controller under the Rent Control Act. The latter Act is a special Act enacted for special purposes and there is no connection between that Act and the District Municipalities Act, though both have been passed by the same legislature. (1955) 2 M.L.J. 467. Section 82 and Rules 6, 8 and 28 of Schedule IV make it clear that (1) the executive authority has the power to fix the rental value (2) that the value so fixed, when entered in the assessment books is the basis of the levy of the tax; (3) that the tax cannot be altered without an amendment of the assessment books; and (4) that even an amendment has only a limited retrospective operation. 68 L.W. 583=(1955) 2 M.L.J. 369=1956 Mad. 49, cited supra.

(2) The annual value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year [1][less a deduction, in the case of buildings, of ten per cent. of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and the adjacent lands occupied as an appurtenance thereto;]
and the said deduction shall be in lieu of all allowance for repairs or on any other account whatever:

Provided that—

[2][(a) in the case of

(i) any Government or railway building or

(ii) any building of a class not ordinarily let

the gross annual rent of which cannot, in the opinion of the [3][executive authority], be estimated
the annual value of the premises shall be deemed to be six per cent. of the total of the estimated value of the land and the estimated present cost of erecting the building after deducting for depreciation a reasonable amount which shall in no case be less than ten per centum of such cost; and]

(b) machinery [4][and furniture] shall be excluded from valuations under this section.

LEG. REF.

1. Substituted by Madras Act III of 1944; re-enacted permanently by Madras Act VII of 1948; the amendment should be deemed to have taken effect from the commencement of Madras Act X of 1930 which originally inserted the words 'in the case of buildings only'.

2. This clause was substituted for the original clause (a) in the proviso by section 63 (ii) (d) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. These words were substituted for the word 'chairman' by section 17 (1) of the Madras District Municipalities (Amendment) Act 1933 (Madras Act (XV of 1933).

4. These words were inserted, by section 63 (ii) (b) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

Sec. 82.—To adopt the valuation of a holding already made may be taken as a determination of the valuation and an acceptance of the old valuation would be a sufficient compliance. When at a time when the holding tax was proposed to be levied, there was already a valuation made in connection with the fixing of the water-rate and current at the time, that valuation should also be adopted for the purpose of holding-tax also. 61 C. 276=38 C. W.N. 245=1934 Cal. 673. The meaning and effect of Ss. 85 (b) and 101 of the Bengal Municipal Act is that in every case the rate is to be imposed on the annual value of the holding which is deemed to be the gross annual rent at which the holding may be reasonably expected to let and the proviso is inserted in aid of the assessee, to lay down a maximum to prevent excessive assessments being made. The measure of rateable value is defined by statute as the rent which may reasonably be expected. Interest on costs or on capital value cannot be substituted for the statutory measure but can be looked at as prima facie evidence in order to answer the question of fact, what rent a tenant may reasonably be expected to pay. And where the hereditament is incapable of being compared with other hereditaments which form the subject of letting the capital expended is admissible in evidence as a criterion by which to estimate the rent. Where a holding which was debutter property was used for temple purposes and for the use of the shebait and the valuation officer estimated its value by guess as to what he conceived to be the cost of erecting buidings, etc., Held, that the assessment had not been made according to the requirements of S. 101 and that it must be set aside. In such a case the holding should have been assessed on the gross annual rent at which the holding may reasonably be expected to let. 57 Cal. 162=34 C.W.N. 155=1930 Cal. 38. A suit praying for an injunction to restrain the Municipal Committee from recovering the assessed sum on the ground that the assessment is illegal and ultra vires is barred by the Municipal Act. A tax once assessed cannot be disputed in any other way than that laid down in the Act and it does not matter if the assessment is illegal or ultra vires. 36 P.L.R. 301=16 L. 529

[(3) The *[State Government] shall have power to make rules regarding the manner in which, the person or persons by whom and the intervals at which, the value of the land, the present cost of erecting the building and the amount to be deducted for depreciation, shall be estimated or revised, in any case or class of cases to which clause (a) of the proviso to sub-section (2) applies, and they may, by such rules, restrict or modify the application of the provisions contained in Schedule IV to such case or class of cases.] (Added by Madras Act XXXVI of 1942), re-enacted permanently by Madras Act VII of 1948).

LEG. REF.

*Substituted by A.L.O., 1950.

=1935 L. 970. The words of the Bombay Municipal Boroughs Act that the decision passed on appeal by the Magistrate, is, at the instance of either party, subject to revision, etc., are not mandatory in the sense that it is incumbent on either party to adopt the remedy provided in the section, and there is nothing to prevent an assessee to municipal tax from filing a suit in the Civil Court even though he may not have followed in its entirety the procedure for appealing to the Magistrate laid down in the Act quite apart from the Municipal Boroughs Act, the Civil Court has jurisdiction to entertain a suit with regard to any liability to municipal taxation. Such a suit is independent, and need not be filed after exhausting the other remedies provided in the Bombay Municipal Boroughs Act. 42 Bom.L.R. 223=1940 B. 188. Where there has been no regular assessment or alteration of assessment, and a party sues for a declaration that he is not liable to be classed in a particular class of tax-payer, a suit lies in the civil Court. 127 I.C. 514=1930 All. 222.

Sec. 82.—Tax paid under mistake of law—Recoverability — Declaratory relief — Effect. See (1958) 1 M.L.J. 217, cited under S. 354, innfra.

S. 82, Cl. (2).—Having regard to the purpose and intendment of the Madras District Municipalities Act and of the proviso to Cl. (2) of S. 82, compound walls form part of the building and the cost of constructing the compound walls should also be taken into consideration in fixing the annual value of the premises for purposes of assessment. 54 L.W. 754=200 I.C. 895=1942 M.W.N. 267=A.I.R. 1942 Mad. 255=(1941) 2 M.L.J. 1093.

Cinema Theatre.—Basis of valuation—Assessment — Interference — Powers of Civil Court. See (1958) 1 M.L.J. 217, cited under S. 354 (2), infra.

Under S. 82 (2), it is only the rent of the hypothetical tenant that should be ascertained and the property assessed for the purpose of taxation. Fees levied in a market which are not in the nature of rent cannot properly form part of any basis for assessment for property tax. 72 L.W. 429=(1959) 2 M.L.J. 92.

The deduction for repairs referred to in S. 82 (2), Madras District Municipalities Act, is to be estimated on the rental of the house together with its site and not on some hypothetical rental for the house alone apart from its site. 211 I.C. 416=56 L.W. 616=1943 M.W.N. 647 (1)=A.I.R. 1944 Mad. 123=(1943) 2 M.L.J. 431. See also 1941 Mad. 641.

Sec. 82 (2), Proviso and effect of.—The proviso to S. 82 (2) of the Madras District Municipalities Act does not say that the method of arriving at the annual value by taking a percentage of the capital value is to be utilised only in the case of the classes of buildings to which that proviso applies. It leaves the generality of the substantive enactment in the sub-section unqualified except in so far as concerns the particular subjects to which the proviso relates. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. A Municipality within whose limits certain properties are situate is not precluded from adopting a percentage of the capital value of such properties as a method of ascertaining their annual value for the purpose of imposition of property tax merely by reason of the fact that the method is specifically enjoined in the particular instances mentioned in the proviso to S. 82 (2), and that the properties are not included in these instances. 71 I.A. 113=I.L.R. (1946) Mad. 1=57 L.W. 422=1944 M.W.N. 564=48 C.W.N. 618=47 Bom.L.R. 587=A.I.R. 1944 P.C. 71=(1944) 2 M.L.J. 25 (P.C.).

Sec. 82 and Sch. IV, Part I, R. 4.—Statutory revision of assessment to tax—Raising of rental value of house—Legality. A statutory restriction on the rent payable by a tenant of a building and the fact that a landlord cannot enforce, as against a tenant, a rent higher than the statutory standard rent in operation at that time, cannot operate as a statutory restriction on the rent earning capacity of a building. The rental value as computed by the municipality does not become unlawful merely because fair rent was fixed for a building

General Exemptions.

83. [1][(1) The following buildings and lands shall be exempted from the property tax:—

LEG. REF.

1. Section 83 of the Act was renumbered as sub-section (1) of section 83 by S. 64 (1) of the Madras District Municipalities (Amendment) Act 1930 (Madras Act X of 1930).

---

under the Rent Control Act, subsequent to the assessment of tax for a particular year. 70 L.W. 19.

Secs. 82 (2) and 87.—S. 82 does permit the annual value of buildings, which are in existence for only a portion of the year, to be arrived at by distributing the gross rent for the period during which they are in existence over the period for which they are assessed, but enables the Municipal Council to calculate the gross annual rent upon the rent at which the plaintiff's house might reasonably be expected to be let irrespectfive of the fact that it actually was not in existence for the whole year. Quaere: whether vacancy remission can be claimed under S. 87 in the case of an unconstructed house. 24 L.W. 212=96 I.C. 1054 (1)=1926 Mad. 1007. See also I.L.R. (1937) 1 Cal. 576 =1937 Cal. 14 (separate valuation of lands and buildings). Amount collected should not exceed the maximum prescribed by the Act or rules. 1935 Nag. 224. When four premises were amalgamated into one, the assessment on the amalgamated premises cannot, during the currency of the assessment that was in force at the time of amalgamation, be higher than the assessment on separate valuation of the four amalgamated premises prior to the amalgamation: 36 C.W.N. 1932. As to consolidated rate of assessment; see I.L.R. (1937) 2 Cal. 353=41 C.W.N. 701=1937 Cal. 363; (1937) 1 Cal. 251=41 C.W.N. 353. It is a well-established principle in rating that property must be valued as it exists at the time when the rate is made, with all the existing circumstances rebus sic stantibus. Prospective appreciation of depreciation cannot be taken into account by the rating authority, nor can a hypothetical state of things be assumed. The land is not to be regarded as bare land. It is to be taken in its present disposition and valued, I.L.R. (1940) 1 Cal. 168= 1940 Cal. 47. In arriving at the letting value of a building the evidence afforded by the return or by the accepted assessment of the neighbouring premises is admissible in evidence. Those are relevant facts and admissible under S. 9, Evidence Act. A.I.R. 1940 Cal. 47. Where a small portion of a building is let out to tenants and the rest is in direct occupation of the owner himself assessment cannot be made partly under S. 127 (a) and partly under S. 127 (b), Calcutta Municipal Act. The assessment must be made under S. 127 (b) only. (A.I.R. 1939 P.C. 20. Foll.). 1940 Cal. 47. It is not right to say that beneficial occupation is the sole consideration and that it is the beneficial occupier and the value of his occupation that has to be considered in all cases of assessment under the Calcutta Municipal Act. A.I.R. 1940 Cal. 47. In the case of dilapidated house unfit for human habitation, which is used only for storing lumber, fuel, etc., it is not correct to value the house for purposes of taxation as a good living house deducting a certain percentage for deterioration. Nor is it correct to assess it on the mere value of the material: 20 N.L.J. 175. Assessment should be confirmed if assessee does not adduce evidence against assessment. 1928 C. 450=32 C.W.N. 378. Valuation officer making guess work as to the value of the holding—Commissioner accepting the same —Validity of assessment. See 58 Cal. 87 =50 C.L.J. 537. Assessment by commissioners—Finality of—Suit to set aside—When competent. See 13 Pat. 693=5 P. L.T. 424=1934 Pat. 357. See also 1939 Pat. 236. Municipal Committee — Unauthorised levy of money—Suit to recover —Limitation. See 152 I.C. 680=1935 Lah. 47 (1).

Sec. 83.—A building used for stabling temple horses or given for respectable pilgrims for use is entitled to be exempted from being taxed as used for a public purpose. 27 M.L.J. 231=1 L.W. 513=26 I.C. 96. The exemption from property tax of religious and charitable buildings provided by S. 83 of the District Municipalities Act cannot be claimed in respect of a building which had once upon a time been dedicated to such a purpose as a choultry, but has entirely ceased to be used for that purpose. Anything which is in fact a choultry is exempt from the tax. The exemption cannot be extended to a building which once was a choultry, but is no more a choultry, or to a building which is not but ought to be a choultry and might return to the state of being a choultry, if and when circumstances change. A.I.R. 1938 Mad. 923=(1938) 2 M.L.J. 639. When there are a large number of shops and stalls inside the compound of a temple, in which all kinds of commodities are being sold, as long as the commodities are not such as can only be used for purposes of worship in the temple, or in other words, as long as the shops and stalls are not being used only for purposes subservient to the worship in

[1][(a) places set apart for public worship and either actually so used or used for no other purpose;

(b) choultries for the occupation of which no rent is charged and choultries the rent charged for the occupation of which is used exclusively for charitable purposes;

LEG. REF.

1. Inserted by Mad. Act XXI of 1939, clauses (c), (d) and (e) of S. 83 renumbered as clauses (g), (h) and (i) respectively by Mad. Act XXI of 1939.

---

the temple, the shops and stalls must be held to be taxable, as they cannot be said to be set apart for public worship or actually used for that purpose within the meaning of S. 83 of the Madras District Municipalities Act; they are not exempt from payment of property tax. 203 I.C. 233=1942 M.W.N. 528=55 L.W. 528=A.I.R. 1942 Mad. 658=(1942) 2 M.L.J. 269. School buildings being buildings exclusively used for charitable purposes are exempt from taxation; and a suit could be successfully maintained to recover from a Municipality, the amount of house-tax and water-tax levied by it and paid under protest in respect of such buildings. 21 M. 367. S. 83 — Applicability — Building used by lessee for a school—Owner's right to claim exemption from property tax. The word 'used' in S. 83, Madras District Municipalities Act means 'used' by the person who is primarily liable for the tax or in other words the owner. Where a building has been leased by the owner to another, and that another is using it as a school (for educational purposes); the owner cannot claim exemption from liability to property tax under S. 83. 199 I.C. 472=1941 M.W.N. 772=54 L.W. 392 (2)=A.I.R. 1941 Mad. 877=(1941) 2 M.L.J. 338. A building was used as a secondary school which, though open to the public for the purpose of imparting education, was run as a proprietary concern by the headmaster of the school who was entitled to appropriate for himself all the profits arising from the school after meeting the expenses of management. A question having been raised as to whether the building was liable to be assessed by the Municipality to property tax. Held, that the building was exempt from assessment because it was 'used for educational purposes' within the meaning of S. 85 (a). The words 'which are open to the public and from which income is derived' in S. 83 (a) are referable only to libraries and playgrounds' and not to 'buildings used for educational purposes'. 54 M. 495=1931 M. 55=129 I.C. 225=60 M. L.J. 456. Even if there is a darga on some part of a land; or if the land is the endowment of a darga; that does not make it exempt from Municipal Property-tax. 103 I.C. 832=1927 Mad. 927. Where the essential idea underlying the deed of endowment was that the building in question was to be used for the free gift of food and drink, to every Dwadesi to Brahmins; and there was no provision for such paradesis staying there at night. Held, that the building, though intended for charitable purposes, was a 'chathram' but not a 'choultry' within the exception to S. 83 (a) of the Act because the word 'choultry' (corruption of 'chavadi') connoted a resting place for travellers. 146 I.C. 307 =1933 M. 782=65 M.L.J. 678.

Sec. 83 (1) (a): Construction: Obiter.—The only places which require that no income should be derived therefrom in order to be entitled to exemption are the last-mentioned of the series, namely, playgrounds which are open to the public and from which no income is derived. (54 M. 495; Not Foll.). 146 I.C. 307=38 L.W. 642=65 M.L.J. 678. As to assessment of 'lands used solely for agricultural purposes' under S. 63 of the old Act, see 12 M.L.J. 393=25 M. 627.

Section 83 (1) (b) (as amended). —Applicability — Charitable association —Objects of association to give shelter and food to poor and to pilgrims—Establishment of choultry by Committee—Levy of property-tax by Municipality on buildings belonging to Committee—Exemption—Right to. The plaintiff, a charitable association registered under Act XXI of 1860, whose objects in the main were giving shelter and food to the poor and to the pilgrims who visit Vijayawada for the purpose of bathing in the river Krishna and offering worship to Goddess Kanaga Durga, established a Choultry wherein visitors were permitted to remain for not more than 3 days with their families and also supplied with cooking utensils and given every necessary help. Free Food and alms were given to poor boys and assistance was rendered also for their education. The ten buildings that are involved in the suit are situate outside the choultry building. It is alleged in the plaint that these ten buildings are rented and the income realised therefrom is used and applied for charitable purposes, it would appear that the defendant—Municipality had been levying property-tax and the plaintiff institution has been paying the same in respect of the ten buildings for several years. On the question whether

(c) buildings used for educational purposes including hostels, public buildings and places used for the charitable purpose of sheltering the destitute or animals, and libraries and playgrounds which are open to the public;

(d) such ancient monuments protected under the Ancient Monuments Preservation Act, 1904, or parts thereof as are not used as residential quarters, or as public offices;

(e) Charitable hospitals and dispensaries;

(f) such hospitals and dispensaries maintained by railway administrations as may from time to time be notified by the *(State Government;]

[2][[1][(g)] burial and burning grounds included in the book kept at the municipal office under section 281;]

[1][(h) buildings or lands belonging to the municipal council;

[3][[1][(i)] any irrigation work vesting in the (Government)* including the bed of a water-course, or any building or land adjacent and appertaining to such irrigation work; *(Government) lands set apart free for recreation purposes; and all such other *(Government) property (being neither buildings nor land from which in the opinion of the (State)* Government any income could be derived) as may from time to time be notified by the (State)* Government:]

[1][Provided that nothing contained in clauses (a), (c) and (e) shall be deemed to exempt from property tax any building or land for which rent is payable by the person or persons using the same for the purposes referred to in the said clauses.]

[4][**Explanation.**—The exemption granted under this section shall not extend to residential quarters attached to schools and colleges not being hostels or to residential quarters attached to hospitals, dispensaries and libraries.]

[5][(2) The water and drainage tax shall not be levied on any land used exclusively for agricultural purposes and not deriving any benefit from the water or drainage works on account of which the tax is imposed.]

LEG. REF.

*Substituted by A.L.O., 1950.

1. Vide footnote 1 on page 89.

2. This clause was substituted for the original by S. 64 (1) (iii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. Substituted by Mad. Act XI of 1939.

4. This explanation was inserted by S. 64 (1) (iv) of the Madras District Municipalities (Amendment) Act, 1930 (Mad. Act X of 1930).

5. These sub-sections were added by S. 64 (2) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

---

the ten buildings referred to in the plaint are entitled to the exemption from property-tax under S. 83 (1) (b) of the Madras District Municipalities Act (V of 1920), as amended. Held: The language of S. 83 (1) (b) is explicit. It is a well-recognised canon of construction of taxing enactments that one has to look at what is clearly said. Looking therefore at the language of the section without any predilection for the purpose for which the Institution has been founded or the manner in which its funds are applied, the suit buildings cannot by any stretch of language be called choultries. The language of S. 83 (1) (b) must be strictly construed. Any building or house property acquired by the Plaintiff-Committee cannot be called a choultry, and if the plaintiff-Committee should acquire a cinema-house and appropriates the income therefrom for the charitable purpose, it cannot be called that the house is a choultry. Every building whose income is used and applies for the purpose of maintaining the choultry or for other charitable purpose is not a choultry. Before the exemption is claimed, it must be shown that the building is a choultry, that the ten buildings involved in the suit are not choultries is beyond all doubt. Case-law referred. (1959) 2 Andh.W.R. 323.

[1][(3) The municipal council may with the previous sanction of the [2][State Government] exempt any particular part of a municipality from the payment of the whole or a portion of the water and drainage tax or of the lighting tax on the ground that such area is not deriving full benefit from the water-supply and drainage or from the lighting system.]

[1][(4) The municipal council may exempt any building or land from the whole or any portion of the scavenging tax if it is satisfied that the owner or occupier has made efficient arrangements for the daily removal therefrom of rubbish, filth and carcasses of animals.]

[1][(5) The municipal council may by a general resolution exempt any building or land from the property tax—

(i) if the annual value of the same does not exceed a sum specified in the said resolution, such sum not being greater than eighteen rupees, and

(ii) the proprietor does not own any other building or land assessed to the property tax and is not liable to profession or income-tax.]

Taxation to be uniform.

[3][84. (1) The rate of any class of property tax on lands when levied on their annual value [4][under section 81, sub-section (2)] may be lower than the rate of the same class of property tax on buildings but either rate shall be uniform throughout the municipal area on all buildings or on all lands liable to be taxed on their annual value as the case may be:

Provided that the aggregate property tax leviable in the case of light-houses, piers, wharves, jetties and passenger sheds, latrines, cart-stands, retiring rooms and platforms belonging to a railway administration shall not exceed 4 per cent. of their annual value.

(2) The rate of any class of property tax shall be uniform throughout the municipal area on all lands liable to be taxed on their capital value.]

Property tax a first charge on property.

85. The property tax on buildings and lands shall, subject to the prior payment of land revenue, if any, due to the Government thereon, be a first charge upon the said buildings or lands and upon the movable property, if any, found within or upon the same and belonging to the person liable to such tax.

LEG. REF.

1. Vide footnote 5 on p. 90.
2. The words 'Provincial Government' were substituted for the words 'Local Government' by paragraph 4 (1) of Government of the India (Adaptation of Indian Laws) Order, 1937; and the word 'State' was substituted for the word 'Provincial' by A.L.O., 1950.
3. This section was substituted for the original by S. 65 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).
4. Inserted by Madras Act XX of 1955.

Sec. 85.—Where a Municipal Committee sought to recover amounts payable by the occupants of certain chabutras constructed by the Committee and it appeared that the case was really one of ordinary relationship of landlord and tenant between the parties, it was held that the money claimed could not be recovered summarily under the Act and that the proper course was for the Committee to institute a suit in the Civil Court. 133 I.C. 278=32 P. L.R. 172=1931 Lah. 315 (2). Similarly the summary procedure was refused by the Court in the following cases. 7 Lah. 568=1926 Lah. 518=96 I.C. 224 (money due under lease): 10 Cr.L.J. 353=3 I.C. 638 (claim for arrears of rent); 148 I.C. 516=1933 Lah. 394 (rent due in respect of a balcony); 1923 Nag. 264=19 N.L.R. 122=73 I.C. 52 (unpaid lease money); 99 I.C. 1030=1927 Lah. 161 (amount due from the person to whom the Municipal Committee had framed out the collection of octroi, toll or terminal tax); 14 Lah. 664=147 I.C. 604 (arrears of rent of municipal sites called teh-bazari or teh-zamini); 131 I. C. 337 (2)=32 Cr. L.J. 693 (1) (money due under contract of lease). In

some of these cases, it has been broadly stated that money due under a contract cannot be recovered by the special procedure. Where the Committee granted permission to the petitioner for the temporary occupation of a portion for a temporary erection thereon, subject to the sum of rupees five being paid annually and subject to the condition that the permission could be withdrawn at any time, the sum so due is a fee claimable under the Municipal Act and if in arrears could be realised by summary procedure. 133 I.C. 550=1931 Lah. 753 (1). Where no licence was ever applied for or granted, it is illegal on the part of the Committee to attempt to levy licence fees by distress and sale of the movable property. 1933 Lah. 814.

Duty of Magistrate.—On an application by a Municipal Committee for the recovery of any arrears of any tax, the Magistrate must satisfy himself that the Committee is legally constituted and that the amount is 'claimable' as a tax or assessment; the word 'claimable' is not the same as 'due', 2 P.R. 1910 (Cr.)=4 I.C. 951. The Magistrate must satisfy himself that the Committee is legally constituted and that the amount claimed as a tax or assessment is legally imposed. It is not competent to the Magistrate to go into the merits and investigate the details of the sum claimed. 4 I.C. 951. When a Municipal Committee applies to recover an amount claimable under the provisions of the Act the position of the Magistrate is similar to that of a Magistrate recovering under Criminal Procedure Code a fine passed by another Magistrate. It is not open to him to hold a judicial enquiry into the legality of the order of the Committee or of the Commissioner on appeal. 38 P.L.R. 4=1936 Lah. 144. His duty is to see whether the order, e.g., an order for the recovery of octroi duty, is intra vires or ultra vires. If ultra vires, he should refuse to act. 109 P.L.R. 1909 =2 P.R. 1910 (Cr.). An arrear Municipal tax is made by S. 79 of the C.P. Municipalities Act (as applied to Berar) of recoverable as if the property were assessed to land revenue and the arrear were an arrear of land revenue due thereon. If a sale is resorted to in this connection, it would transfer the property free of all prior encumbrances imposed upon it. 1939 N.L.J. 362. S. 203 of the Bombay Municipal Boroughs Act only provides an alternative procedure for the recovery of taxes, and does not deprive the Municipality of its right to proceed under Ss. 104 and 105 when that is available. The fact that the remedy under S. 203 is barred by time does not lead to the conclusion that the remedy by way of distress under Ss. 104 and 105 is also lost. I.L.R. (1939) B. 685 =41 Bom.L.R. 1002=A.I.R. 1939 Bom. 494.

Onus of Proof.—Where a suit is filed questioning the procedure adopted by the Municipal Committee in recovering certain amounts due by way of rent by recourse to the summary procedure prescribed by the Act, it is for the Municipal Committee to show that the amount for which they applied to the Magistrate is money legally recoverable under the Act. 138 I.C. 278=1931 Lah. 315 (2). See also 20 Pat.L.T. 119=A.I.R. 1939 Pat. 20.

First charge for tax—If falls under S. 100, T. P. Act. See 1948 Mad. 412= (1948) 1 M.L.J. 284.

Revision.—An improper order made by a Magistrate in a case to which that section has no application can be set aside in revision by High Court. 99 I.C. 1030= 28 Cr.L.J. 230=1927 Lah. 161. See also 38 P.L.R. 4=1936 Lah. 144. Though under the Municipal Act, the Corporation has a first charge on the property for the consolidated rates, when the charge is not notificed as such at the time when the property is sold in execution of a decree, the conditions of sale providing for the purchaser's non-liability for outgoings prior to the date of payment of the purchase money: Held, that the purchaser was not liable to pay the arrears, but the mortgagee-decree-holder would get only the balance sale proceeds after deducting the dues of the Corporation. 61 Cal. 956= 38 C.W.N. 971=1934 Cal. 842. A charge under the Calcutta Municipal Act for the consolidated dues from any person in respect of lands or buildings, is a statutory one created by operation of law to which Ss. 67 and 67-A of the T. P. Act do not apply. Therefore the corporation is entitled to a decree for sale in respect of such a charge, and it is not bound; under S. 67-A, T.P. Act, to enforce all the charges it has against the same person in respect of different properties in one and the same suit. A statutory charge under S. 205, Calcutta Municipal Act, includes movables as well as immovables and comes into being for the first time when the rates become due, whereas S. 67-A, T. P. Act, contemplates a security which is already in existence. The corporation is also entitled to a decree for sale in respect of a charge held by it under S. 205, Calcutta Municipal Act; as S. 67, T. P. Act; also does not apply to it. 61 C. 1047=38 C. W.N. 917=1934 Cal. 862. It is the property of the defaulter only, that is, the person on whom notice has been served under S. 102; that can be distrained and sold. The notice, which an owner of property must give in order to entitle himself to remission of house-tax, is an annual one. 14 M. 467. The doors of a house

Property tax when payable.

[1][86. The property tax shall be levied every half-year and shall, save as otherwise expressly provided in Schedule IV, be paid by the owner of the assessed premises within thirty days after the commencement of the half-year.]

Vacancy remission.

[2][87. (1) When any building whether ordinarily let or occupied by the owner himself has been vacant and unlet for thirty or more consecutive days in any half-year, the [3][executive authority] shall remit so much, not exceeding one-half of, such portion of the tax as relates to the building only as is proportionate to the number of days during which the building was vacant and unlet in the half-year.

(2) Every demand for remission under sub-section (1) shall be made during the half-year in respect of which the remission is sought or in the following half-year and not afterwards.

[4][(3) (a) No demand for such remission shall be entertained unless the owner of the building or his agent has previously thereto delivered notice to the executive authority—

LEG. REF.

1. This section was substituted for the original by S. 66 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. This section was substituted for the original by S. 67, ibid.

3. These words were substituted for the words 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

4. This sub-section was substituted for the original sub-section (3) by S. 6 of the Madras District Municipalities (Second Amendment) Act, 1934 (Madras Act IV of 1935).

---

are not attachable as movable property under the District Municipalities Act. 13 M. 518 (F., 14 M. 467). See also 18 M. 310 cited under S. 84. Limitation for suit to enforce charge under this section. See 41 L.W. 457=1935 Mad. 378. See also I. L.R. (1939) B. 685=1939 Bom. 494. The proper article applicable to a suit under S. 177 of the U. P. Municipalities Act is Art. 132 of the Limitation Act and not Art. 120 and the period is 12 years from the time when money sued for becomes due. 1939 A. W. R. (H.C.) 261=A.I.R. 1939 All. 510.

Sec. 86.—Under S. 86 of the Madras District Municipalities Act as amended in 1930, the person liable to pay the property tax is the owner of the premises and in order to be an owner he must be in the same category of a person receiving or entitled to receive rents and profits of the property. There is however no provision in the Act by which a person who is entitled to receive the rents and profits, but whose interest in the property is limited to the melwaram right can be assessed in respect of the kudivaramdar and have a right to recoup himself. S. 86 does not entitle a Municipality to demand from the melwaramdar anything more than a tax upon the interest in the premises of which he is the owner. A.I.R. 1939 Mad. 946 =(1939) 2 M.L.J. 304. 'Owner'—Agricultural land in possession of occupancy ryots—Landholder's liability for tax. See (1945) 2 M.L.J. 244. The requirements as to notice contained in R. 29 of Sch. IV to the District Municipalities Act are not a condition precedent to any claim in a Civil Court, they are only confined to the enforcement of payment by distraint or prosecution in a Criminal Court under R. 30. No notice such as is specified in R. 29 need therefore be given by a Municipality as a condition precedent to the filing of a suit under S. 86 of the Act. I. L.R. (1937) Mad. 985=45 L.W. 774=A. I.R. 1937 Mad. 562. See 17 M. L. J. 306=30 M. 423.

Sec. 87.—Applicability—Building vacant in part—Right to claim remission—S. 3 (3). Even if a portion of a building is vacant, proportionate remission should be granted under S. 87. The expression 'any building' in S. 87 (1) does not necessarily mean a building in its entirety or as a whole, but may be read as including any portion of a building. (1956) An.W.R. 306, following (1954) 2 M.L.J. 556.

Sec. 87 (1)—Vacancy of building.—Where the owner of a bungalow had left the building for a definite period not intending to return or reoccupy the building during that period, it should be regarded as 'vacant' during that period within the meaning of S. 87 (1), so as to entitle him to claim vacancy remission. In such a case the fact that the owner's library and furniture remained in the bungalow during

(i) that the bullring is vacant and unlet; or

(ii) that the building will be vacant and unlet from a specified date either in the half-year in which notice is delivered or in the succeeding half-year.

(b) The period in respect of which the remission is made shall be calculated—

(i) if remission is sought in respect of the half-year in which notice is delivered from the date of delivery of the notice or from the date on which the building became vacant and unlet, whichever is later; and

(ii) if remission is sought in respect of the half-year succeeding that in which the notice is delivered, from the commencement of the half-year in respect of which remission is sought or from the date on which the building became vacant and unlet, whichever is later.

(d) Every notice under clause (a) shall expire with the half-year succeeding that during which it is so delivered, and shall have no effect thereafter.]

Obligation of transferor and transferee to give notice of transfer.

88. (1) Whenever the title of any person primarily liable to the payment of property tax on any premises to or over such premises is transferred, the person whose title is transferred and the person to whom the same shall be transferred shall within three months after the execution of the instrument of transfer or after its registration if it be registered or after the transfer is effected, if no instrument be executed, give notice of such transfer to the [1][executive authority.]

(2) In the event of the death of any person primarily liable as aforesaid the person to whom the title of the deceased shall be transferred, as heir or otherwise shall give written notice of such transfer to the [1][executive authority] within one year from the death of the deceased.

(3) The notice to be given under this section shall be in such form as the [1][executive authority] may direct and the transferee or the person to whom the title passes, as the case may be, shall, if so required, be bound to produce before the [1][executive authority] any documents evidencing the transfer or succession.

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

---

the owner's absence will not make any difference as they are mere appurtenances which will add to its amenities when its occupation takes place. Nor will the fact that a care-taker was left behind in order to prevent the building deteriorating of itself or being trespassed upon by others during the absence of the owner, render the building other than vacant within the meaning of the section. 212 I.C. 158=56 L.W. 438=1943 M.W.N. 485=A.I.R. 1943 Mad. 674=(1943) 2 M.L.J. 183. Rule 73 (2) of the Act (old Act) does not apply to a case where a building has become unfitted for the purposes for which it was originally intended, but only to a case where it ceases to exist as a building. Where the owner of a building intended for a theatre removed the thatched portion of the roof, which rendered the building until to be used as a theatre: Held, that the building was neither demolished nor destroyed and that the owner remained liable for the tax but only to halt the municipal tax as the building was unoccupied during the period. 40 M.L.J. 306=44 M. 354. A building is vacant and unproductive of rent when neither the owner nor his friends or relations occupy it; or when it is not let out to any tenant or lessee. 'Vacant' is used in the sense of non-occupation and does not mean that the land should be barren land and be not covered by trees or vegetation. Similarly the words 'unproductive of rent' do not mean incapable of producing rent. 57 A. 408=1934 A.L.J. 1067=1934 All. 1007.

Sec. 88.—There is nothing in the provisions of the Act that makes it compulsory on the part of the Municipality to ap-

(4) Every person who makes a transfer as aforesaid without giving such notice to the [1][executive authority] shall, in addition to any other liability which he incurs through such neglect, continue liable for the payment of property tax assessed on the premises transferred until he gives notice or until the transfer shall have been recorded in the municipal registers but nothing in this section shall be held to affect—

(a) the liability of the transferee for the payment of the said tax, or

(b) the prior claim of the municipal council under section 85.

Owner's obligation to give notice of construction, reconstruction or demolition of building.

[2][89. (1) (a) If any building in a municipality is constructed or reconstructed, the owner shall give notice thereof to the [1][executive authority] within fifteen days from the date of completion or occupation of the building, whichever is earlier.

(b) If such date falls within the last two months of a half year, the owner shall, subject to notice being given under clause (a), be entitled to a remission of the whole of the tax or enhanced tax, as the case may be, payable in respect of the building only for that half-year.

(c) If such date falls within the first four months of a half-year, the owner shall, subject to notice being given under clause (a), be entitled to a remission of so much not exceeding a half of the tax or enhanced tax, as the case may be, payable in respect of the building only, for that half-year, as is proportionate to the number of days in that half-year preceding such date.

(2) (a) If any building in a municipality is demolished or destroyed, the owner shall, until notice thereof is given to the [1][executive authority] be liable for the payment of the property tax which would have been leviable had the building not been demolished or destroyed.

(b) If such notice is given within the first two months of a half-year, the owner shall be entitled to a remission of the whole of the tax payable in respect of the building only, for that half-year.

(c) If such notice is given within the last four months of a half-year, the owner shall be entitled to a remission of so much not exceeding a half of the tax payable in respect of the building only, for that half-year as is proportionate to the number of days in that [3][half-year succeeding the demolition] or destruction as the case may be.]

Remission of tax in areas included or excluded in the middle of a half-year.

[2][90. (1) If any area is included within a municipality the owner of every building or land in such area shall—

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. These sections were substituted for the original Ss. 89 and 90 by S. 68 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. These words were substituted for the words 'half-year preceding the demolition' by the Second Schedule to the Madras Repealing and Amending Act, 1938 (Madras Act XIII of 1938).

portion the tax for any particular year among persons, in whom the ownership of the house may have vested during the period. The Municipality has the right to proceed for the year's tax on all or some of the owners, whether they are common owners occupying simultaneously or successive owners, leaving them to adjust their liabilities inter se by appropriate proceedings, in case dispute arises between them in the matter. 17 M.L.J. 306=30 M. 423.

Sec. 90.—Payment of rates or taxes in future—Power of Commissioners to remit. See 34 C.W.N. 1013=1991 C. 629. S. 51 of the Bengal Municipal Act merely autho-

(a) if the date of such inclusion falls within the last two months of a half-year, not be liable to pay any property tax in respect thereof for that half-year; and

(b) if such date falls within the first four months of a half-year, be entitled to a remission of so much not exceeding a half of the property tax payable in respect thereof for that half-year, as is proportionate to the number of days in that half-year preceding such date.

(2) If any area is excluded from a municipality the owner of every building or land in such area shall be entitled—

(a) if the date of such exclusion falls within the first two months of a half-year, to a remission of the whole of the property tax payable in respect thereof for that half-year; and

(b) if such date falls within the last four months of a half-year, to a remission of so much not exceeding a half of the property tax payable in respect thereof for that half-year, as is proportionate to the number of days in that [1][half-year succeeding such date].

(3) No remission shall be granted under sub-section (2) in respect of any building or land unless an application for such remission is made to the [2][executive authority] within three months from the date of the execution of the area in which the building or land is situated.]

Power of executive authority to call for information and to enter upon premises.

91. (1) For the purpose of assessing the property tax, the [2][executive authority] may, by notice call on the owner or occupier of any land or building to furnish him, [3][within thirty days after the service of the notice, where the notice is served upon the Government, a railway administration or a company and within seven days after such service in other cases,] with returns of the rent payable for the land or building, the cost of erecting the building and the measurements of the land [4][and with such other information as the [2](executive authority) may require;] and every owner and occupier on whom such notice is served shall be bound to comply with it and to make a true return to the best of his knowledge or belief.

(2) For the purpose aforesaid the [2][executive authority] may enter, inspect, survey and measure such building or land, after giving twenty-four hours' notice to the owner or occupier.

[5][. . . .]

[5][92. (Omitted.)]

LEG. REF.

1. These words were substituted for the words 'half-year preceding such date' by the Second Schedule to the Madras Repealing and Amending Act, 1938 (Madras Act XIII of 1938).

2. Vide foot-note (1), page 95.

3. These words were substituted for the words 'within a week after the service of the notice' by S. 69 (a) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

4. These words were inserted by S. 69 (b) ibid.

5. S. 92 and the heading thereto were omitted by S. 70 ibid.

---

rises the chairman to exercise the powers vested in the Commissioners by the Act and will not obviously confer on him any delegated authority to act on behalf of the Commissioners in respect of matters not authorised by the Act. If, therefore, the chairman allows a reduction or remission of rates without acting in conformity with the provisions of the Act, the Municipality cannot be bound by such Act. 180 I. C. 673=43 C. W. N. 194=A.I.R. 1939 Cal. 79.

Profession tax.

[1][93. (1) If the council by a resolution determines that a profession tax shall be levied—

1. This section was substituted for the original by S. 71 ibid.

Sec. 93.—The Madras District Municipalities Act, in respect of the provisions contained in it relating to the imposition of profession-tax and other taxes, is a taxing statute, and must be contrued strictly. Before a person can be made liable to the tax imposed on him it must be clearly shown that he comes within the four corners of the section. I.L.R. 1938 M. 203 =1937 Mad. 894=(1937) 2 M.L.J. 569. The test of liability to profession tax in the case of a person holding an appointment is not personal presence within the municipality. If he holds appointment within the municipality for 60 days he is liable to profession tax. A.I.R. 1938 Mad. 709=(1938) 2 M.L.J. 31. Persons who are in the position of del credere agents of a company and who are neither independent dealers nor commission agents would be liable to be assessed to companies tax. 1927 Mad. 1020=106 I.C. 334. Where a company merely buys goods in another place through an agent and where the contract for purchase of those goods is only concluded elsewhere, the Company is not, in the place where the goods are brought transacting business in the sense that those words are used in S. 92 of the Madras District Municipalities Act of 1920. 'Transacting business for profit' is 'carrying on a trade'. Where the plaintiff company purchased cotton and ground-nuts in Dindigul through its agent and also acted as Managing Agent for another company in the said place and received a profit in return thereof and it appeared that the initiative and control of the entire business were in the hands of the head office at Madras: held, that the plaintiff Company did not transact any business in Dindigul either as regards the transactions entered into on its own behalf or as Managing Agent and that they were consequently not liable for companies' tax under S. 92. 108 I.C. 216=27 L. W. 243=1929 M. 146. 'Transacting business' in S. 92 of the new Act means no more than the phrase 'carrying on business'. In the case of a firm or company carrying on banking business, the net profits calculated by deducting from the gross profits all expenses necessarily incurred for the purpose of carrying on the business and earning the gross profits, should form the basis of assessment to tax on circumstances and property. 12 Luck. 182=160 I.C. 803=1936 Oudh 206. Per the Chief Justice.—If a company does carry on business in a Municipality, the fact that it does so by an agent who has no power to make binding contracts is no longer one of the tests to be applied. Per Madhavan Nair, J.—The question whether a company transacts business within Municipality for profit is ultimately a question of fact depending upon the evidence in each case. What has to be found out mainly from the evidence is as to where the contracts relating to the business of the company are habitually made. The mere employment of an agent to do some work for the company within the Municipality will not make the company liable to pay the tax so long as the effective management of the business, as its administration and control are vested elsewhere. 52 M. 207=1929 M. 409=56 M.L.J. 525; 1929 M. 146. On this section see also 1926 M. 152=22 L.W. 619=49 M.L.J. 542. Bunyans guaranteeing purchaser — Agents or independent contractors — Del credere agent—Taxation of company. See 106 I.C. 334=1927 M. 1020. S. 93 of the Madras District Municipalities Act is controlled by R. 18 of Sch. IV of that Act. Municipalities cannot levy profession tax from persons carrying on business within their limits except when their principal office or place of employment is also within their own jurisdiction. (52 M.L.J. 360, Foll.) 150 I.C. 890=1934 M. 420=67 M. L.J. 566. See also 13 Luck. 541=A.I.R. 1937 Oudh 468. Where a company or a benefit society carries on business within a municipality, it is to be assessed on its paid-up capital. If it has no paid-up capital it follows that it cannot be assessed. The assessee company was formed with the object of gathering recruits for tea estates. Apart from the subscription and the capitation fee, each estate contributed Rs. 75 for the expenses of the recruiters. Held, that the contributions constituted 'income' and not 'capital' and that the Society was not liable to be assessed to company tax. 55 M. 282=1932 M. 160= 62 M.L.J. 662. S. 93 must be read with Cl. (3) of the section and S. 18 of Sch. IV of the Act. 98 I.C. 513=1926 M. 1187=52 M.L.J. 360. The word 'Principal' in the section qualified both 'office' and 'place of employment'. (Ibid.) A firm carrying on business can be assessed to profession-tax only at its principal place of business. (Ibid.) If a person who becomes successively liable in a single half-year to pay profession-tax in two municipalities pays it in the second he acquires exemption from liability to pay it in the first except to the extent of paying the

every company which, after the date specified in the notification published under section 80, transacts business in the municipality for not less than sixty days is the aggregate in any half-year; and every person, who after the said date, in any half-year—

(a) exercises a profession, art, or calling or transacts business or holds any appointment, public or private—

(i) within the municipality for not less than sixty days in the aggregate, or

(ii) without the municipality but who resides in the municipality for not less than sixty days in the aggregate, or

(b) resides in the municipality for not less than sixty days in the aggregate, and is in receipt of any pension or income from investments, shall pay a half-yearly tax assessed in accordance with the rules in Schedule IV.

(2) A person shall be chargeable under the class appropriate to his aggregate income from all the sources specified in sub-section (1) as being liable to the tax.

(3) If a company or person proves that it or he has paid the sum due on account of the profession tax levied under this Act, or under the Madras Local

---

difference between the two taxes. 50 M. 987=26 L.W. 439=1927 M. 968=58 M.L. J. 193.

'Professional income'.—What is income received by a temple from investments of surplus devasthanam funds is not 'professional income' within the meaning of S. 93, sub-S. (1) of the Madras District Municipalities Act, and is not taxable. Per Wallace, J.—'Professional income' in the sub-section means income derived from the actual exercise of a profession. Per Srinivasa Ayyangar, J.—It is only when the making of the investment and the receipt of the income therefrom is followed as a profession that such income can be taxed. 51 M. 301=27 L.W. 834=1928 M. 569=54 M. L. J. 147. Profession tax is to be levied only on professional income and not on income derived from lands outside municipal limits. 1936 M. 857. A person cannot be deemed to cease to reside in a house merely because he is a absent from it if he has not abandoned his intention of returning. Nor can he be said to have abandoned his intention of returning when he merely signifies his intention of being absent at a hill-station for a certain period. The assessee had a house within a Municipality in which he actually lived from the 1st to 7th April and from 9th to 30th September. Between 7th April station and before going to the hill-station he informed the Municipality that he in- and 9th September he was absent at a hill- tended to be absent from 7th April till about the end of August. Held, that the assessee was liable to pay profession tax under S. 93 (1) (b) of the District Municipalities Act, though he had not resided in the Municipality for 60 days in the ordinary sense of the term. The assessee, however, had resided within the meaning of S. 3 (25) of the Act and had not ceased to reside within the Municipality during the period of his absence at the hill-station. A.I.R. 1938 Mad. 880=(1938) 2 M.L.J. 353. As to deductions for amounts paid as interest, see I.L.R. (1938) All. 489=1938 A.L.J. 258=A.I.R. 1938 All. 302.

Secs. 93 (1) and 94-A.—Transacting or carrying on business—Meaning of—Person selling goods in a place—If carries on business there. 194 I.C. 722.

Sec. 93 (1) (a) (i) and (ii) and (b)—Applicability and construction — Government servant holding appointment within Municipality for part of half-year but residing outside — Liability to tax—Extent and basis of calculation.—Petitioner was the District and Sessions Judge of Trichinopoly and the total period of his duty as District and Sessions Judge during a half-year was 3 months and 2 days. During this period he worked inside the Municipality of Trichinopoly, but resided outside the Municipality. He paid the profession-tax which would be due from him on the income earned by the exercise of his profession during the period of 3 months and 2 days. The Municipality, however, claimed that he was liable not only on the pay of his appointment during the period for which he held an appointment within the Municipality but also on his professional income for the rest of the half-year when he was absent from Trichinopoly. Held, that the petitioner was taxable only under S. 93 (1) (a) (i) of the Madras District Municipalities Act by virtue of his having held an appointment within the Municipality, that appointment

within the Municipality was the sole source of income in respect of which tax was leviable, and in calculating his income for the half-year, only the income from the taxable source should be taken into consideration. 200 I.C. 113=1941 M.W.N. 402 =53 L.W. 533=A.I.R. 1941 Mad. 636 =(1941) 1 M.L.J. 620.

Sec. 93, Cl. (3).—Assessment to profession-tax by two Municipalities for the same half-year—Claim for refund—Provisions of Act not complied with. See 1927 M.W.N. 922=54 M.L.J. 147.

Cases under old Act.—Where a person carries on one business in one Municipality and another business in another Municipality, he is liable to profession tax in both Municipalities. A person who makes it his business to sell for profit is a 'trader' within the meaning of the Act and the fact of what he sells being the produce of his own land does not make him any the less a trader, provided the sales are conducted in a shop or place of business. 17 M. 100=3 M.L.J. 259 (**Ref. 25 M.** 747). An officer, whose headquarters are within a Municipality, does not ipso facto exercise his profession or hold such office or appointment within the Municipality, so as to make him liable to profession tax under Act IV of 1884. 17 M. 453 (Foll. 22 M. 145; 8 M.L.J. 164). But see 38 M. 879. Where a pleader residing within a Municipality practised as First Grade Pleader in the District Court situated outside it, and also in other Courts situated within the municipal limits, held, that he exercised his profession as such pleader within the Municipality, and was therefore liable to pay profession tax as pleader of that grade. 18 M. 183 (Ref. 8 M.L.J. 73). The word 'holding' does not necessarily involve any suggestion of discharging duties connected with the office. Where the District and Sessions Judge of Cuddalore spent his vacation in Kodaikanal and paid profession tax there, he is not liable to pay the tax again at Cuddalore. 1914 M.W.N. 171; 38 M. 879=23 I.C. 398. Exemption cannot be granted if it is claimed on the ground of payment to another municipality, if such other municipality be not one constituted under this Act. See 4 M.L.T. 477. See also 50 M.L.J. 987. Where a vakil's clerk was assessed to profession-tax under S. 93 on the ground that he was exercising a profession within the municipality and the said clerk contested the levy on the ground that he was only a paid servant of the vakil who was residing outside the municipal limits, held, that the clerk could be assessed to tax only at the principal place of employment, namely, the place of residence of the vakil. 137 I.C. 585=35 L.W. 230 =62 M.L.J. 259. A vakil's clerk holding appointment as a paid servant cannot be said to exercise a profession so as to be liable to profession tax under S. 93. 1932 M. 292=137 I.C. 585=35 L.W. 230=62 M.L.J. 259. Though the explanation to R. 19 of Sch. IV of the District Municipalities Act makes it obligatory on a Municipality to accept for the purposes of assessing profession tax the figures accepted by the Income-tax authorities for the purpose of assessing income-tax, the fact that a person is not liable to pay income-tax in India in respect of his income will not exempt him from liability for profession tax to a Municipality. Profession tax is surely payable whether income or gain arising from the profession is capable of being assessed to income-tax or not. The fact that an officer of the Government having his headquarters within a Municipality goes abroad on leave during the middle of a particular half-year will not entitle him to withhold payment of profession tax on that part of his income or salary which he receives not in India but abroad. His profession tax has to be calculated on the whole of his half-yearly income and not merely on that part of it which is actually received in India. 47 L.W. 254 =1938 M.W.N. 466=A.I.R. 1938 Mad. 462. The petitioner M was appointed District Judge of Kistna with headquarters at Masulipatam on 1—4—1931. On 4—5—1932, the Court closed for the vacation and M left Masulipatam never to return, though he remained the District Judge of Kistna until 31—7—1931 when he retired. On 6—7—1931 the Court reopened. On 22—4—1931 M. was granted leave on average pay from 6—7—1931 to 30—7—1931 with permission to prefix the vacation, and M was not at Masulipatam at all for a period of 60 days, having been there only for the period from 1—4—1931 to 4—5—1931. After he left Masulipatam, he performed some administrative acts, such as appointment of a Record Keeper and other junior officials, which however required no office, so far as he was concerned. The Municipal Council of Masulipatam having assessed M to profession-tax under S. 93 and Sch. IV, R. 17 of the District Municipalities Act. Held, that M did not hold his appointment within the Masulipatam Municipality within the meaning of S. 93 of the Act for the period requisite to make him chargeable and that he had no office in Masulipatam within the meaning of R. 17 of Sch. IV of the Act, and that he was not therefore liable to pay profession-tax. I.L.R. (1938) M. 203= A.I.R. 1937 Mad. 894=(1937) 2 M.L.J. 569.

Dividends received from company—Exemption from taxation.—The dividends received by a person from a company cannot be treated as a source of income for the purpose of levying profession-tax under S. 93 of the Madras District Municipalities Act. In the case of companies, the profits belong to the entire body of

Boards Act, 1920,* or the companies or profession tax levied under the Madras City Municipal Act, 1919, or any tax of the nature of a profession tax imposed under the Cantonments Act, 1924, for the same half-year to any municipal council or local board† or cantonment authority in the Presidency of Madras, such company or person shall not be liable, by reason merely of change of place of business, exercise of profession, art or calling, appointment or residence, to pay to any other municipal council, local board or cantonment authority more than the difference between such sum and the amount to which it or he is otherwise liable for the profession or companies tax for the half-year under this Act, or any of the aforesaid Acts.

(4) Nothing contained in this section shall be deemed to render a person who resides within the local limits of one local authority and exercises his profession, art or calling or transacts business or holds any appointment within the limits of any other local authority or authorities liable to profession tax for more than the higher of the amounts of the tax leviable by any of the local authorities. In such a case the [1][State Government] shall apportion the tax between the local authorities in such manner as they may deem fit and the decision of the [1][State Government] shall be final:

LEG. REF.

*Now the Madras District Boards Act, 1920 (Madras Act XIV of 1920).

†Now the District Board.

1. The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937 and the word State was substituted for the word "Provincial", by A.L.O., 1950.

---

persons composing it and when profession-tax is levied on such profits from the company, the individual members thereof are not in respect of those same profits again liable. Nor can dividends which represent a share of the profits be appropriately termed as 'income from investments.' 58 M. 949=41 L.W. 170=1935 M. 298=68 M.L.J. 162.

Commutation of pension—Profession-tax on—Levy of—Legality.—A retired Government servant who had commuted a portion of his pension for a lump sum of money was assessed to profession tax on that sum as also on the uncommuted pension. Held, that the commutation money was not a pension any longer and that the levy of profession tax on the sum was illegal. Pension is a periodical payment of money for past services.. 58 M. 469 =41 L.W. 146=1935 M. 249=68 M.L.J. 118.

Personal Tax—Nature of—No holding necessary.—The personal tax imposed by S. 85, Calcutta Municipal Act, does not attach itself to any particular holding; it is a tax imposed upon a person occupying a holding within the municipality according to 'cicumstance and property'. The fact that the assessee has been shifting his residence from place to place does not relieve him from the obligation of the personal tax. 36 C.W.N. 906. The section contemplates the imposition of a personal tax or a rate on the annual value of holdings for the first time since the creation of the municipality. But personal tax has been imposed ever since its creation in 1868 and the imposition under the previous Act has been sanctioned under the Act of 1884 and no fresh sanction is necessary. 36 C. W. N. 906. The municipality is entitled to levy a personal tax on private persons and also realise rates from the Government on the annual values of Government buildings though within the same ward. 36 C.W.N. 906=1933 C. 78.

Secs. 93 *and* 94-A.—A person who sells goods in a particular place must be deemed to be carrying on business in that place within the meaning of S. 93 (1) of the Madras District Municipalities Act. The fact that the prices which he charges are fixed by the Government does not make his transactions any the less sales, nor does the fact that his only customers at the place are licensed retail dealers, alter the character of his transactions. The fact that his agent at the place is required to pay into the treasury at the close of a day's business, the moneys which he has received for the goods sold that day has no bearing on the question. Nor does it make any difference that accounts are kept at the head office. If he sells goods in a particular place, he is carrying on business at that place within the meaning of S. 93. It would be a different matter if all the contracts for the supply of goods are made at the head office and goods were merely delivered at the place through an agent. 51 L.W. 181=1940 M.W.N. 111 =1940 M. 731=(1940) 1 M.L.J. 437.

Secs. 93 *and* 95.—Section 93 only lays down the qualification for liability to tax and has nothing to do with the conditions under which the tax become payable. That is dealt with under S. 95 of the Act.

PUBLIC LIBRARY AUG 1960

[1][Provided that where one of the local authorities concerned is a cantonment authority or the port authority of a major port, the decision of the *[State Government] shall be subject to the concurrence of the Central Government.]

Liability of members of firms, associations and joint Hindu families to profession tax.

[2][94. The profession tax leviable from a firm, association or joint Hindu family may be levied from any adult member of the firm, association or family.]

Liability of servants or agents to profession tax.

[2][94-A. (1) If a company or person employs a servant or agent to represent it or him for the purpose of transacting business in a municipality, such company or person shall be deemed to transact business in the municipality and such servant or agent shall be liable for the profession tax, in respect of the

LEG. REF.

1. This proviso was inserted by the Second Schedule to Government of India (Adaptation of Indian Laws) Order, 1937.

*Substituted by A.L.O., 1950.

2.. These sections were substituted for the original S. 94 by S. 72 of the Madras District Municipalities (Amendment) Act, 1930 (Mad. Act X of 1930).

---

48 M. 476=21 L.W. 457=1925 M. 607=48 M.L.J. 428. See also 24 L.W. 218 =1926 M. 448=50 M.L.J. 77. A person, who is in receipt of a pension from the Mysore State for his servies there, is liable to pay tax to the Municipality within which he resides. 1913 M.W.N. 935=21 I.C. 847. 'Pension' covers political pensions also. 122 I.C. 360=1930 M. 200=57 M.L.J. 536. A person who casually or intermittently invests his surplus funds on mortgage or on personal security cannot necessarily be considered to follow the calling of a money-lender so as to render him liable to be taxed as such under the Act. 27 M.L.J. 231=26 I.C. 96. Levy of professional tax under a higher class—Suit for recovery of the tax not maintainable—Remedy by appeal to Municipal Council. 10 L.W. 592. Where a person assessed to profession tax paid the tax demanded from him without any express protest accompanying the payments made by him, he cannot maintain a suit to recover the payments made by him on the ground that he made them under pressure. The fact that he made the payments in pursuance of demand notices served on him, which stated that in default of payment his property will be distrained cannot make the payments involuntary payments. A. I.R. 1937 Mad. 559=(1937) 1 M.L.J. 496. Where most of the dealings that a contractor had with the Department of Public Works in connection with the contracts took place in the division office of Srivilliputtur and the contract was executed there, instructions regarding the execution of works, the subject of the contract, were given to him there, and payments on account of the contract were also made to him there: Held, that the contractor was under those circumstances exercising his profession in the town, notwithstanding that the actual work was done outside the municipal limits. 8 M. L. J. 73 (18 M. 183, Rel. on). The test is where, in substance, the business of making contracts is carried on and controlled. 42 Mad. 455=36 M.L.J. 226=10 L.W. 15 (afirming on appeal, 34 M.L. J. 145=46 I.C. 500). Where a person carries on the business of a money-lender and gets an income of less than Rs. 30 a month, he is not chargeable with profession-tax. 24 M. 644. The money-lending transactions must be numerous, continuous and systematic so that it might appropriately be called the trade or business of money-lending. 27 M.L.J. 231=1 L.W. 513=26 I.C. 96. A Foreign Insurance Company working through Agent in India is not liable to profession-tax. 21 M. 5 (Ref. 24 M. 205). The Clan Line Steamers, a shipping company which earned its profits by carriage of goods and in the course of its business traded, by sea, with a port in Madras at which the ships called for cargo, could not be said to exercise their trade of carrying on their business within the port so as to make them liable for profession tax under section 53. 42 Mad. 455=36 M.L.J. 226=51 I.C. 692 (Affirming on appeal 34 M.L.J. 145=46 I.C. 500). Levy of profession-tax on company—Local agent of company—Carrying on business within the municipal limits—Suit to recover profession-tax paid under protest—Maintainability. 24 M. 205=10 M.L.J. 401 (Ref. to in 35 C. 859=12 C.W.N. 709). As to the meaning of the term 'income', see 27 M. 547. There is no difference in principle between the exaction of tax which has not been legally imposed and the exaction of a tax from a person who is not taxable under the Act. 24 M. 205.

Sec. 94.—An office is merely a place where business is transacted, and the general rule is business is transacted at the place where the contracts are made

business of such company or person, whether or not such servant or agent has power to make binding contracts on behalf of such company or person.

(2) Where one company or person is the agent of another company or person, the former company or person shall not be liable separately to the profession tax, on the same income as that of the principal.]

Service of notice on failure of payment of tax.

[1][95. If the profession tax due from any company or person is not paid, the [2][executive authority] shall cause a notice to be served on such company or person to pay it within fifteen days of the date of such service.]

Statements, returns, etc., to be confidential.

[1][95-A. All statements made, returns furnished or accounts or documents produced in connexion with the assessment of profession tax by any company or person shall be treated as confidential and copies thereof shall not be granted to the public.]

Requisition on owner or occupier to furnish list of persons liable to tax.

96. The [2][executive authority] may by notice require the owner or occupier of any building or land and every secretary or manager of a hotel, boarding or lodging house, club, or residential chambers to furnish within a specified time a list in writing containing the names of all [3][persons occupying such building, land, hotel, boarding or lodging house, club or residential chambers] and specifying the profession, art; [4][. . . . .] calling, or appointment of every such person and the rent, if any, paid by him and the period of such occupation.

Requisition on employers or their representatves to furnish list.

97. The [2][executive authority] may by notice require any employer or the head or secretary or manager of any public or private office, hotel, boarding-house or club or of a firm or company—

(*a*) to furnish within a specified time a list in writing of the names of all persons employed by such employer or by such offiie, hotel, boarding-house,

---

LEG. REF.

1. Sections 95 and 95-A were substituted for the original S. 95 and the heading occurring before that section by S. 73 of the Madras District Municipalities (Amendment) Act, 1930 (Mad. Act X of 1930).

2. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

3. These words were substituted for words "persons occupying such building or land" by S. 74 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

4. The word 'trade' was omitted by S. 74 (ii) ibid.

---

and where control is exercised and not at the place where the contracts are merely executed. A depot or warehouse where goods are stored cannot be said to be the place where business is transacted where the depot keeper has in fact no control over the trade or business. Though he might sell goods there for cash it cannot amount to transacting business when the price is fixed elsewhere at the head office, when the vendees are certain licensed persons approved by the principal office and when all the accounts are maintained in the head office. The depot in such a case is a mere warehouse for distributing goods and no profession tax can be levied at the place where the depot exists. 1939 M. 177=1938 M.W.N. 1276=(1938) 2 M.L.J. 1035.

Sec. 95.—See also notes under S. 93. 'Residence' in S. 85 means personal residence and one who neither himself personally resides nor maintains a residence for himself or for his family within the Municipality but merely maintains an office for the collection of his rent cannot be said to reside within the Municipality. See also 48 Mad. 476=1925 M. 607=48 M.L.J. 428; 24 L.W. 218=1926 M. 446=50 M. L.J. 77. Whether the levy of tax was open to objection also on the ground that as all plaintiff's zamin rents have already been taxed to a fixed peishkush, the peishkush could not be increased by a further tax by the Municipality. See 48 Mad. 476=1925 M. 607=48 M.L.J. 428. A person residing within the Municipality and drawing income from rent of houses outside it is liable to pay profession-tax. 48 Mad.

club, firm or company as officers, servants, dubashes, agents, suppliers or contractors, with a statement of the salary or income of such employed persons and

(b) to furnish particulars in regard to any [1][company] of which such employer, head, secretary or manager, as the case may be, is the agent.

Tax on carriages and animals.

General provisions regarding tax on carriages and animals.

98. [2][(1) If the council by a resolution determines that a tax on carriages and animals shall be levied, the [3][executive authority] shall levy the said tax half-yearly on carriages and animals kept [4][or used] within the municipality which are of the kinds specified in Schedule IV.]

(2) The rates of the tax shall be determined by the council, provided always that they shall not exceed the maxima laid down in Schedule IV.

Liability to tax according to period for which carriage or animal has been kept.

99. (1) Every person having possession, custody, or control of any taxable carriage or animal shall be liable for the full half-yearly tax if the carriage or animal has been kept [4][or used] [5][* * *] within the municipality for an aggregate period of not less than sixty days in the half-year.

(2) If such aggregate period exceeds fifteen days but is less than sixty days, a moiety only of the half-yearly tax shall be leviable.

(3) If such aggregate period does not exceed fifteen days, no tax [6][shall be leviable] for the half-year.

LEG. REF.

1. This word was substituted for the words 'incorporated company' by section 75 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. This sub-section was substituted for the original by section 76 ibid.

3. These words were substituted for the word 'Chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

4. The words 'or used' inserted by Madras Act, XXXVIII of 1942. See Mad. Act IX of 1948.

5. The words 'or let out for hire' were omitted by section 77 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

6. These words were substituted for the words 'is leviable' by section 77 (ii) ibid.

476. The Bank of Madras carrying on its business at Negapatam and Tellicherry among other places paid profession-tax to the Municipality of Negapatam two days before it was due. With the knowledge of these facts, the Municipality of Tellicherry also levied the tax which the Bank paid under protest. Held, the Bank is entitled to recover back the amount so levied by the Municipality at Tellicherry, as the Bank is a single corporations carrying on its business in various places by its agents, and the class in which it should be placed four purposes of assessment would depend on its aggregate income. 15 M. 153. See also 16 M.L.J. 101=29 M. 306.

Sec. 98.—A hired carriage, called by a hirer is not engaged in conveying him, the moment it is called. 14 I.C. 199=13 Cr. L.J. 199. A motor bus plying for hire up and down a Municipality is clearly a carriage let out for hire under this section. 26 L.W. 81=1927 Mad. 798=53 M.L.J. 374.

'Let out for hire' is different from 'ply for hire'—Difference pointed out.—There is a well-recognised distinction between 'letting out for tire' and 'plying for hire'. Where the persons who are picked up have previously reserved accommodation and the driver or the person in control of the vehicles does not solicit or wait to obtain passengers, there is a 'letting out for hire'; whereas on the other hand, there being no antecedent contract or previous arrangement, passengers are received by some process of soliciting, then there is, what is known as a 'plying for hire'. It is not correct to say that to constitute a 'plying for hire' the carriage must run along a fixed route or that the true test of the letting is that the hirer has the power to control the direction or destination of the vehicle. 157 I.C. 977=42 L.W. 199=1935 M. 697=69 M.L.J. 221. See also 181 I. C. 520=A.I.R. 1939 Nag. 171; 41 Bom. L.R. 1249=1940 B. 41 (kept for use).

Sec. 99 (4).—See 1935 Mad. 1056, cited under S. 103, infra.

(4) Every person having possession, custody or control of any taxable carriage or animal within the municipality shall, until the contrary is shown, be presumed to have kept [1][or used] the same within the municipality for sixty days in the half-year.

[2][(5) Notwithstanding anything contained in sub-sections (1) and (2), no person shall be liable—

(a) to pay tax to the municipality during any half-year on account of any carriage or animal in respect of which the full tax for the same half-year has already been paid to the municipality by some other person; or

(b) to pay to the municipality on account of any carriage or animal in respect of which tax has already been paid to any other municipality or any local board* or Cantonment Board, whether under this Act, the Madras City Municipal Act, 1919, the Madras Local Boards Act 1920,† or the Cantonments Act, 1924, more than the excess, if any, of the tax payable in the municipality in respect of such carriage or animal, over the tax already paid to the other municipality, the local board* or Cantonment Board as the case may be.] (*Substituted by Madras Act XXXVIII of* 1942.)

Exemptions.

100. The carriage and animal tax shall not be levied on—

(a) carriages and animals belonging to [3][the Government] and used for military purposes;

(b) carriages and animals kept solely for sale by carriage-makers and dealers;

(c) carriages which have been under repair or standing at a carriage-maker's during the whole of the half-year;

[4][* * * *]

[5][(d)] animals which during the whole of the half-year have been kept in any institution for the reception of infirm animals or which are certified by a veterinary surgeon to have been unfit for use during the whole of the half-year:

[6][*Omitted.*

Composition.

101. With the sanction of the council or in accordance with regulations framed by that body the [7][executive authority] may compound, for any period not exceeding one year, with any livery-stable keeper or other person keeping carriages and animals for sale or hire, for a certain sum to be paid in lieu of the carriage and animal tax.

LEG. REF.

1. Vide Footnote 4 on page 103.

2. Substituted by Madras Act XXXVIII of 1942, re-enacted permanently by Mad. Act IX of 1948.

*Now District Board.

†Now the Madras District Boards Act, 1920 (Madras Act XIV of 1920).

3. These words were substituted for the words 'the Government' by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word "crown" as so substituted, the word "Government" was substituted by A.L.O., 1950.

4. In S. 100, old clauses (d) and (e) omitted and old clause (f) relettered as clause (d) by Madras Act XXXVIII of 1942.

5. These words, letters and brackets were substituted for the words, letters and brackets 'clauses (d), (e) and (f)' by Schedule I to the Madras Motor Vehicles Taxation Act 1931 (Madras Act III of 1931).

6. The proviso added by section 78 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930), was omitted by Madras Act XXXVIII of 1942, re-enacted permanently with modifications by Madras Act IX of 1948.

7. Vide Footnote 3, on page 103.

Forms to be sent to and returned by tax-payers.

102. (1) The [1][executive authority] shall send to every person supposed to have become liable to the payment of the [2][tax on carriages and animals] a printed table to be filled up with such information respecting the carriages and animals kept [3][or used] by him as the [1][executive authority] considers necessary for the assessment of the tax.

(2) Such table shall be filled up with such information in writing, and signed and dated, and returned within one week of its receipt to the Municipal office by the person to whom it has been sent.

[4][(3) On the expiry of the period of one week referred to in sub-section (2), the [1][executive authority] shall cause a notice to be served on such person requiring him to pay within fifteen days of the date of such service the sum for which, in the opinion of the [1][executive authority] such person is liable on account of the tax on carriages and animals.]

Grant of licence on payment of tax.

103. When any person pays the amount of tax due in respect of any carriage or animal, the [1][executive authority] shall grant him a licence to keep [3][or use] such carriage or animal for the period to which the payment relates.

Power to require numbers to be affixed to bicycles, etc.

104. (1) The [1][executive authority] may direct that a municipal number shall be affixed—

(*a*) to every carriage let out for hire within the municipality, and

(*b*) to every bicycle and tricycle kept [3][or used] within the municipality:

Provided that no municipal number shall be requisite in the case of carriages to which a number must be affixed under the provisions of any special Act.

(*c*) The numbers affixed under sub-section (1) shall be registered in the municipal office.

LEG. LEF.

1. These words were substituted for the word 'chairman' by section 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. These words were substituted for the words 'carriage or animal tax' by S. 79 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. Inserted by Madras Act XXXVIII of 1942.

4. This sub-section was added by S. 79 (ii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

Secs. 103 and 99 (4): 'Kept within the Municipality'—Meaning of—Vehicle allowed to stand on the roadside.—The words 'kept within the municipality' in S. 103, District Municipalities Act, does not contain any such limitation as that a person keeps a taxable vehicle only if he has an accommodation to contain it and that if he has no fixed accommodation for it, he is not keeping it within the Municipality. By reason of S. 99 (4) the presumption is that every person having possession, custody or control of a taxable vehicle within the Municipality has 'kept' the same within the the Municipality for sixty days in the half-year until the contrary is shown and the burden of showing to the contrary is on the owner of such taxable vehicle. Where a person is found to have in his custody and possession a motor bus but he has no accommodation for it in the shed and it is found to be standing on the roadside, it cannot be said that it is not 'kept within the Municipality' within the meaning of S. 103. 1935 Mad. 1056=159 I.C. 929.

Secs. 104 and 105.—Where the plaintiff removed the portion of the axle, on which the registration number has been painted from a damaged wheel, and affixed it to the repaired axle, held, that when the registration number has been affixed in this manner the cart bears the registration number for the purposes of S. 85 and the registration number is kept affixed for the purposes of S. 88, unless such affixing is contrary to any bye-law of the Municipality or a direction given by the Municipality. 18 M.L.J. 377.

Tax on carts.

General provisions regarding cart-tax.

105. [1][(1) If the council by a resolution determines that a tax shall be levied on carts,[2][executive authority] shall levy the said tax half-yearly at the rate (which shall not exceed four rupees per cart per half-year), fixed by the council and specified in the notification published under section 80 in pursuance of such resolution and from the date specified in such notification in respect of all carts kept [3][or used] within the municipality].

[4][(1-A) Notwithstanding anything contained in sub-section (1), no person shall be liable—

(*a*) to pay tax to the municipality during any half-year on account of any cart in respect of which the tax for the same half-year has already been paid to the municipality by some other person; or

(*b*) to pay to the municipality on account of any cart in respect of which tax has already been paid to any other municipality or any local board* or cantonment Board, whether under this Act, the Madras City Municipal Act, 1919, the Madras Local Boards Act, 1920,† or the Cantonments Act, 1924, more than the excess, if any, of the tax payable in the municipality in respect of such cart, over the tax already paid to the other municipality, the local board or the Cantonment Board, as the case may be.]

(2) Every owner of any such cart shall register it once in every half-year in the municipal office.

(3) The council may direct that a municipal number shall be affixed to every registered cart.

(4) The [2][executive authority] shall notify certain days in every half-year for the registration and numbering of carts and the payment of the tax.

(5) All registrations made and numbers affixed under this section shall be entered in a book to be kept for the purpose at the municipal office.

(6) Such book shall be open to the inspection of any [5][person who pays any tax to the municipality] at all reasonable times without charge.

(7) This section shall not apply to carts belonging to [6][the Government] and used for military purposes, or carts kept solely for sale by cart-makers and dealers.

Power to remit tax.

106. [7][The tax on carts shall not be levied on any cart which is shown to the satisfaction of the executive authority to have been kept or used] [8][* * *] within the municipa-

---

LEG. REF.

1. This sub-section was substituted for the original by S. 80 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. These words were substituted for the words 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment)) Act, 1933 (Madras Act XV of 1933).

3. Inserted by Madras Act XXXVIII of 1942.

4. Inserted by Madras Act XXXVIII of 1942, re-enacted permanently by Madras Act (IX of 1948).

*Now District Board..

†Now the Madras District Boards Act, 1920 (Madras Act XIV of 1920).

5. These words were substituted for the words 'tax-payer' by S. 80 (ii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

6. The words "the Crown" were substituted for the words 'the Government' by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937 and for the word "Crown" as so substituted word 'Government' was substitlted by A.L.O., 1950.

7. Substituted by Madras Act XXXVIII of 1942.

8. The words "or let out on hire" were omitted by Madras Act X of 1930.

Sec. 105.—Though the U.P. Municipal Act imposes an obligation on the owners of vehicles plying for hire to take out a licence and to pay a fee therefor, it only make the collection of the tax, which is authorised by S. 128 (1) (iv) of the Act, simpler than it might otherwise be; but

lity for an aggregate period not exceeding fifteen days in the half-year, or to have been under repair or standing at a cart-maker's during the whole of the half-year.

[1][*Taxes leviable under sections* 98 *and* 105.

Prepayment of municipal tax condition precedent to registration under Madras Act V of 1911.

106-A. Where the Madras Hackney Carriage Act, 1911, is in force in any area of a municipality, the person appointed to perform the functions of the Commissioner under the said Act in respect of such area shall, before registering any hackney carriage thereunder satisfy himself that the municipal council has received payment of the tax, if any, due under section 98 or section 105 as the case may be, on account of the last preceding half-year and the current half-year.]

Powers to seize carriages and carts not bearing numbers.

Seizure of vehicles not bearing numbers.

107. (1) If a municipal number is not affixed to a carriage or a cart in pursuance of a direction issued under section 104 or section 105, as the case may be, the [2][executive authority] may at any time seize and detain the vehicle and the animal, if any, by which it is drawn:

Provided that no vehicle other than a bicycle, tricycle [3][. . . . .] or rickshaw shall be seized or detained when actually employed in the conveyance of any passenger or goods.

(2) If the vehicle or animal seized be not claimed and the tax due thereon paid within ten days from the date of seizure, the [2][executive authority] may direct that the vehicle or animal shall be sold in public auction and the proceeds of the sale applied to the payment of—

(i) the tax, if any due, on the vehicle or animal sold;

(ii) such penalty not exceeding the amount of the tax as the [2][executive authority] may direct; and

(iii) a sum of one rupee on account of charges incurred in connection with the seizure, detention and sale.

(3) If the owner of the vehicle or animal or other person entitled thereto claims the same within ten days from the date of seizure or at any time before the sale, it shall be returned to him on payment of—

(i) the tax due thereon;

(ii) such penalty not exceeding the amount of the tax as the [2][executive authority] may direct; and

---

LEG. REF.

1. This heading and section were inserted by S. 82 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

3. The word 'motor-bicycle' was omitted by Schedule I to the Madras Motor Vehicles Taxation Act, 1931 (Madras Act III of 1931).

---

the adoption of this method for the collection of the tax cannot make it any the less a tax. A suit in respect of a tax lawfully levied is barred by S. 160. I.L.R. (1939) All. 477=1939 A.L.J. 339=A.I.R. 1939 All. 519. The words 'kept for use within the borough', in S. 73 (2) of the Bombay Municipal Boroughs Act mean 'kept for normal use within the borough' and there is no doubt that where a vehicle is kept for normal use outside the borough, an occasional user within the borough can be rejected on the principle of *de minimis non curat lex.* A vehicle which is both used in the Presidency of Bombay and is also used within the borough may be the subject of taxation by two taxing bodies, i.e., both under the Municipal Borough Act and under the Motor Vehicles Act of 1935. There is no principle to prevent such double taxation. 41 Bom.L.R. 1249.

Secs. 107 *and* 108.—An attachment of a cart for want of licence just at the time when the goods of passengers are placed

(iii) a sum of eight annas on account of charges incurred in connexion with the seizure and detention.

Tax on servants.

General provisions regarding servants' tax.

108. (1) [1][If a hill station municipal council by a resolution determines] that a tax shall be levied on servants,[2][the [3](executive authority) shall collect] a monthly tax from the date and at the rates (which shall not exceed two rupees a month for each servant) fixed by the council and specified in the notification [4][published under section 80 in pursuance of such resolution] from every employer of private menial and of domestic servants who is not liable for the profession tax [5][. . . . .] or, as proprietor, for the property tax.

(2) The tax may differ for different classes of servants.

(3) The tax shall be payable at the full monthly rate for every servant employed for not less than fifteen days in the aggregate out of every thirty days from the commencement of the employment, and at a moiety of the monthly rate for every servant employed for less than fifteen days but not less than seven days in the aggregate during such periods.

(4) If the tax remains unpaid at the end of seven days or fifteen days, as the case may be, the [3][executive authority] may serve upon the employer a notice requiring him to pay within three days from the service of such notice the sum for which he is believed to be liable, and may, on the expiry of such period, recover from the said employer the sum specified in such notice.

(5) Every person who has paid the servants' tax for any period in a half-year and has also paid the profession tax [5][. . . . .] or (as proprietor) the property tax in the same municipality for that half-year, shall be entitled to a refund of the sum paid as servants' tax.

Power to call for lists of servants.

109. The [3][executive authority] may by notice require—

(*a*) every employer of private menial and domestic servants, and

(*b*) every secretary, owner or manager of a hotel, boarding or lodging house, club or residential chambers to furnish with a specified time a list in writing of the private menial and domestic servants employed by him or by every person resident in such place.

[6][110. (*Omitted*).]

LEG. REF.

1. These words were substituted for the words 'If the chairman of a hill station municipality publishes a notification under S. 80' by S. 83 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. These words were substituted for the words 'he shall collect' by S. 83 (i) ibid.

3. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

4. These words were inserted by S. 83 (ii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

5. The words 'or surcharge on the income-tax' were omitted by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

6. Section 110 to 114 and the heading thereto were omitted by Schedule I to the Madras Motor Vehicles Taxation Act, 1931 (Madras Act III of 1931).

---

in it and the passengers are about to get into it was held to be illegal under S. 89 of the Act, 1884. A seizure under such circumstances is an offence under S. 166 of the Penal Code. 13 Cr. L. J. 199=14 I.C. 199.

Cases under old (now omitted) Sections 110 to 114.

Secs. 110 *and* 111.—A 'toll-gate kist' is not a tax under S. 103 but it is 'money due under a contract' under S. 92. Therefore, a prosecution for such non-payment will not lie under the Act, 1884. 16 Cr. L.J. 702=30 I.C. 750.

[1][111. (*Omitted*).]
[1][112. (*Omitted*).]
[1][113. (*Omitted*).]
[1][114. (*Omitted*).]
[3][115. (*Omitted*).] [2][* * *]

Pilgrim tax.

Levy of pilgrim tax.

[4][116. (1) Where a municipality is resorted to by pilgrims, and the occasions for pilgrimage occur at intervals of years or only once or twice in a single year, a tax on persons leaving the municipality or its neighbourhood by railway, shall be levied only for a specified period in respect of each such occasion. Where occasions for pilgrimage are more frequent or a municipality is a place of pilgrimage of perennial resort, the tax may be levied throughout the year.

(2) The occasion and the period of levy of the tax shall, in consultation with the railway administrations concerned, and with the previous approval of the [5][State Government], be determined by the municipal council.

(3) If the council resolves that the tax shall be levied, such tax shall be collected from the date and during the period specified in the notification published under section 80 in pursuance of such resolution as a surcharge on the tickets of all passengers travelling by railway from any one of the railway stations in or near the mnicipality and named in such notification to any other railway station more than a specified distance therefrom.

(4) The rates at which the tax shall be levied on each class of tickets shall be determined by the municipal council but shall not exceed the rates in the following table:—

	Tax.					
	For limited periods.			Throughout the year.		
(1)	(2)			(3)		
	Rs.	A.	p.	Rs.	A.	p.
For first-class tickets	0	8	0	0	4	0
For second-class tickets	0	4	0	0	2	0
For intermediate class tickets	0	3	0	0	1	6
For third-class tickets	0	2	0	0	1	0

LEG. REF.

1. Vide Footnote 6 on page 108.
2. The heading "surcharge on income-tax" was omitted by Madras Act XXXVI of 1955.
3. This section was omitted by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.
4. This section was substituted for the original by S. 88 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).
5. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word "Provincial", the word "State" was substituted by A.L.O., 1950.

Sec. 111.—Farming out other fees than tolls is illegal and a suit based on such farming is not maintainable. 36 M. 113 =11 I.C. 669. A Municipal Council has no power to farm out the right to collect slaughtering fees. A lease of such a right is void under Ss. 11 and 23 of the Contract Act. 36 Mad. 113=21 M.L.J. 790 =11 I.C. 669.

Sec. 114.—To constitute an offence of evading octroi duty there should be an attempt to introduce dutiable articles into octroi limits with intent to defraud the Municipal Committee. The fact that a person refused to pay octroi on the ground that the articles were not dutiable does not render him guilty of an offence under the section. 32 P.L.R. 688=1931 Lah. 752 (1). See also 18 P.R. 1874 (Cr.).

Octroi Duty—Power to levy.—It is beyond the power of a Committee to levy octroi duty upon goods which were already outside the octroi zone, but were brought after extension of the octroi limits within the zone. 2 P.R. 1910 (Cr.)=11 Cr. L. J. 87.

Provided that the rates leviable on season tickets, if any, shall be determined by the municipal council in consultation with the railway administrations concerned but shall not for a period of one month or any less period exceed six times the rates given in column (2) of the above table.

(5) The [1][State Government] may make rules not inconsistent with this Act for regulating—

(i) the collection of the tax,

(ii) the payment thereof to the council concerned.

(iii) the deduction of any expenses incurred by railway administrations in the collection thereof, and

(iv) the decision of disputes—

(a) between municipal councils and between municipal councils and other local authorities, and

(b) [2][. . . . . . .]

between municipal councils and railway administrations in matters connected with the levy, collection or apportionment of the tax:]

[3][Provided that rules relating to the decision of disputes shall not have effect in relation to a dispute to which the cantonment authority, or the port authority of a major port, or the administration of any railway as defined in Cl. (20) of article 366 of the constitution, is a party, unless the rules are made with the concurrence of the Central Government].

[4][*Duty on Transfers of Property.*

Method of assessment of duty on transfers of property.

[5][116-A. The duty on transfers of property shall be levied (a) in the form of a surcharge on the duty imposed by the Indian Stamp Act, 1899, as in force for the time being in the State of Madras, on every instrument of the description specified below within the limits of a municipality; and

(b) at such rate as may be fixed by the State Government, not exceeding five per centum (on the amount specified below against such instrument) :—

Description of instruments.	*Amounts on which duty should be levied.*
(i) Sale of immoveable property.	The amount or value of the consideration for the sale as set forth in the instrument.
(ii) Exchange of immoveable property.	The value of the property of the greater value as set forth in the instument.
(iii) Gift of immoveable property.	The vale of the property, as set forth in the instrument.
(iv) Mortgage with possession of immoveable property.	The amount secured by the mortgage, as set forth in the instrument.
(v) Lease in perpetuity of immoveable property.	An amount equal to one sixth of the whole amount or value of the rents which would be paid or delivered in respect of the first fifty years of the lease, as set forth in the instrument.]

LEG. REF.

1. Vide Footnote 5 on page 109.
2. The words 'with the previous sanction of the Governor-General in Council' were omitted byy the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.
3. This proviso was substituted by A.A. O., 1950 for the original Proviso which was inserted by the Second Schedule, Ibid.
4. This heading and Ss. 116-A, 116-B and 116-C were inserted Madras Act XX of 1945, re-enacted permanently by Madras Act VII of 1948.
5. New S. 116-A substituted by Madras Act VIII of 1950 for original S. 116-A, inserted by Madras Act XX of 1945.

116-B. On the introdction of the transfer duty—

Provisions applicable on the introduction of transfer duty.

(a) section 27 of the said Indian Stamp Act shall be read as if it specifically required the particulars to be set forth separately in respect of property situated within the limits of a municipality and outside such limits;

(b) section 64 of the same Act shall be read as if it referred to the municipal council concerned as well as the Government.

Power to make rules regarding assessment and collection of transfer duty.

116-C. The †[State Government] may make rules not inconsistent with this Act for regulating the collection of the duty, the payment thereof to the municipal councils concerned and the deduction of any expenses incurred by the Government in the collection thereof.] (*Sections 116-A to 116-C inserted by Madras Act XX of* 1945, re-enacted permanently by Madras Act VII of 1948).

General provisions regarding taxation and finance.

Power to exempt from taxes.

117. With the sanction of the †[State Government] the municipal council may exempt any person or class or persons wholly or in part from the payment of any tax [1][. . . .] [2][But nothing in this section shall be deemed to authorize the exemption of any person solely on the ground that he is a member of a municipal council.]

Power to exempt from coverable taxes, etc.

[3][118. The municipal council may write off any tax, [1][. . .] fee or other amount whatsoever due to it, whether under a contract or otherwise, or any sum payable in connexion therewith, if in its opinion; such tax [1][....] fee, amount or sum is irrecoverable.]

Definition to municipal fund.

119. All moneys received by the municipal council shall constitute a fund which shall be called the municipal fund and shall be applied and disposed of subject to the provisions of this Act or other laws.

Budget estimate.

120. The municipal council shall [4][* * * * * * * * * * * * *] in each year frame a budget showing the probable receipts and the expenditure which it proposes to incur during the following year and shall submit a copy of the budget to the †[State

---

LEG. REF.

†The words "Provincial Government" were substituted for the word 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and the word "State" was substituted for the word "Provincial by A.L.O., 1950.

1. The words 'or toll' were omitted by Schedule I to the Madras Motor Vehicles Taxation Act, 1931 (Madras Act III of 1931).

2. This sentence was added by S. 89 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. This section was substituted for the original section by S. 90, ibid.

4. Omitted by Madras Act VII of 1942.

Sec. 117—*Remission of Taxes.*—Commissioner has no power to remit rates or taxes in futuro. 1931 Cal. 129=34 C.W.N. 1013=130 I.C. 141.

Government] before [1][such date as may be fixed by them in that behalf]. The budget shall contain provision, adequate in the opinion of the †[State Government] for the due discharge of all liabilities in respect of loans contracted by the council and for the maintenance of a working balance; and if the budget as submitted to the †[State Government] fails to make these provisions, the †[State Government] may [2][modify any part of the budget] so as to ensure that such provisions are made.

Revised or supplemental budget.

121. If in the course of a year a municipal council finds it necessary to modify the figures shown in the budget with regard to its receipts or to the distribution of the amounts to be expended on the different services it undertakes, it may submit a supplemental or revised budget provided that no alteration shall be made without the consent of the †[State Government] in the amount allotted for the service of debt or in the working balance.

Appointment of auditors of accounts.

122. The †[State Government] shall appoint auditors of the accounts of receipt and expenditure of the municipal fund. Such auditors shall be deemed to be 'public servants' within the meaning of section 21 of the Indian Penal Code.

Contribution to expenditure by other local authorities.

123. (1) If the expenditure incurred by the †[State Government] or by any other municipality to which this Act applies or by any other local authority in the Presidency of Madras for any purpose authorized by or under Part II of Schedule IV is such as to benefit the inhabitants of a municipality, the municipal council may, with the sanction of the †[State Government], make a contribution towards such expenditure.

(2) The †[State Government] may direct a municipal council to show cause, within a month after receipt of the order containing the direction, why any contribution described in sub-section (1) should not be made.

(3) If the municipal council fails to show cause within the said period to the satisfaction of the †[State Government] the †[State Government] may direct it to make such contribution as [3][they shall name,] and it shall be paid accordingly.

Application of Schedule IV.

124. The rules and tables embodied in Schedule IV shall be read as part of this chapter.

Recovery of loans and advances made by the State Government.

[4][124-A. Notwithstanding anything contained in the Local Authorities Loans Act, 1914, the †[State Government] shall be entitled to recover in the manner provided by sub-section (4) of section 39 of this Act or by suit any loan or advance made to any municipal council for any purpose to which the funds of the said council may be applied under this Act.]

LEG. REF.

†Substituted by A.L.O., 1950.

1. These words were substituted for the words 'the end of February' by S. 91, Madras Act X of 1930.

2. These words were substituted for the words 'alter any part of it' by S. 91 ibid.

3. These words were substituted for the words 'as he shall name' by the Schedule ibid.

4. This section was inserted by S. 92, ibid.

Sec. 124.—See 1936 Mad. 857. See (1958) 1 An.W.R. 394 as to effect of the section. See notes under Ss. 303 and 305.

PART IV.

Public Health—Safety and Convenience.

CHAPTER VII.

WATER-SUPPLY, LIGHTING AND DRAINAGE.

Water-supply—Vesting of works and powers of Municipal authorities.

Vesting of works in Municipal Councils.

125. (1) All public water-courses and springs and all public reservoirs, tanks, cisterns, fountains, wells, stand-pipes, and other water-works existing at the time of the coming into force of this Act or afterwards made, laid or erected, and whether made, laid or erected at the cost of the municipal council or otherwise, and also any adjacent land (not being private property) appertaining thereto shall vest in the council and be subject to its control:

[1][Provided that nothing contained in this section shall apply to any work which is, or is connected with, a work of irrigation or to any adjacent land appertaining to any such work.]

(2) The [2][State Government] may by notification limit or define such control or may assume the administration of any public source of water-supply and public land adjacent and appertaining thereto after consulting the municipal council and giving due regard to its objections, if any.

Construction and maintenance of water-works.

126. (1) The municipal council may, with the sanction of the [2][State Government,] direct the construction of such works as it deems fit without the limits of the municipality for supplying it with water and may provide channels, tanks, reservoirs, cisterns, engines, mains, wells, fountains, stand-pipes, and other works as it may deem fit within the said limits for the use of the inhabitants.

(2) The council may cause existing works for the supply of water to be maintained and supplied with water, or it may close any such works and substitute other such works and may cause them to be maintained and supplied with water.

Trespass on premises connected with water-supply.

127. It shall not be lawful for any person except with permission duly given and obtained to enter upon land belonging to or vested in a municipal council along which a conduit or pipe runs, or upon any premises connected with the water-supply.

Prohibition of building over water mains.

128. (1) Without the permission of the council no building, wall or other structure shall be newly erected and no street or railway shall be constructed over any municipal water mains.

LEG. REF.

1. This proviso was added by S. 7 of the Madras District Municipalities (Second Amendment) Act, 1934 (Madraas Act IV of 1935).

2. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937 and the word "State" was substituted by A.L.O., 1950 for the word "Provincial."

Sec. 127—Applicability — Premises connected with the water-supply—Meaning of.— The word "premises" includes land also. Water-supply in S. 127 can only mean water-supply from any source, including a well. A well cannot be used without some open space all round 1955) An.W.R. 416.

(2) If any building, wall or other structure be so erected or any street or railway be so constructed, the council may cause the same to be removed or otherwise dealt with as shall appear to it fit and the expenses thereby incurred shall be paid by the persons offending.

Supply for domestic use.

Council to provide water for domestic use.

129. The municipal council shall, so far as the funds at its disposal may admit, provide a sufficient supply of water fit for the domestic use of the inhabitants.

S. 129. *Andhra Amendment*:

Andhra Act IV of 1956 has omitted the heading "supply for domestic use" before section 129 and also the word "domestic" occurring in section 129.

Control over house-connexions.

130. All house-connexions, whether within or without the premises to which they belong, with any water-supply mains which may have been constructed by a municipal council shall be under the control of the council, but shall be altered, repaired and kept in proper order, at the expense of the owner of the premises to which they belong or for the use of which they were constructed, and in conformity with by-laws and regulations framed by the council in this behalf.

S. 130. *Andhra Amendment*:

Andhra Act IV of 1956 has substituted the word "connexions", for the word "house-connexions."

Sec. 129: *Liability of Municipality for damages.*—Under the provisions of the Act the subterranean system of connexion pipes and ferrules attached and fixed to the municipal main, whether used for the benefit of the public generally or connected with private houses, so far as these latter are actually on the municipal lands and streets, is under the control, supervision and management of the Municipality and it is its duty to see that it is properly maintained and kept in working order. If owing to breaking of such pipes and ferrules, water escapes and the subterranean soil is thereby flooded with the result that the houses in the vicinity are damaged, and if the municipality fails to take steps in proper time to stop the leakage of water it is liable for the damage. 121 I.C. 500 =1929 Lah. 730. On this section, see also 1939 A.L.J. 191=A.I.R. 1939 All. 212. Under S. 97 (1) of the Punjab Municipal Act, the committee in supplying water for domestic purposes to any premises has power to limit the water to be supplied to one family. A person who enters into a contract not to allow any person, except the members of his own family, to draw water from the taps, is bound by the terms of his contract.. There is nothing in such a contract which is contrary to the terms of the statue. 39 P.L.R. 206=A.I.R. 1937 Lah. 662. When there is only one occupier of a house under an owner and there is excess water consumed by the occupier, he, the occupier, shall be liable for the excess water. In such a case, the occupier alone is liable and not the owner. 41 C.W.N. 222. Under S. 295 of the Bengl Municipal Act, the duty of maintaining the meter in good order rests upon the Municipality and not on the owner or occupier of the house. It is true thata under rules framed by Government which were adopted as bye-laws by the Municipality, the entire costs of house connection including the expenses of a meter had to be borne by the owner or occupier of the house, but there is no rule or bye-law that the costs of maintaining the meter in good order have to be met by the house-owner and not by the Municipality. 180 ..CI 391=A.I.R. 1939 Cal. 254. S. 309, Cl. (d) of the Bengal Municipal Act does not empower the Commissioner to cut off water-supply on the ground of any defect in or non-repair of the meter. 180 I.C. 393=A.I.R. 1939 Cal. 254. The expression 'a rate on buildings or lands' in S. 110 (2) (b) (i) of the Bombay Municipal Boroughs Act includes a tax in the form of a rate on buildings or lands; and the clause applies not merely to a rate on buildings or lands, but also to a water-tax imposed in the form of a rate assessed on buildings or lands. 41 Bom. L.R. 1015=A.I.R. 1939 Bom. 478 =I.L.R. 1939 B. 701.

Private water-supply for consumption and domestic use and powers of executive authority to enforce provision of water-supply.

131. (1) In municipalities in which there is a pipe supply of water, the [1][executive authority] may, at his discretion, on application by the owner or occupier of any building, arrange, in accordance with the bye-laws to supply-water thereto for domestic consumption and use:

Provided that the [1][executive authority] shall not, without the sanction of the council, agree to supply water to any building assessed at an annual value of less than one hundred and twenty rupees.

(2) Whenever it appears to the [1][executive authority] that any dwelling-house assessed at an annual value of not less than two hundred rupees is without a proper supply of water for domestic consumption and use and that such a supply can be furnished from a main not more than one hundred feet distant from any part of such building, the [1][executive authority] may by notice require the owner to obtain such supply and to execute all such works as may be necessary for that purpose in accordance with the by-laws and regulations.

(3) The cost of making the connexion and the cost or hire of meters shall be borne by the owner or applicant and shall be recoverable in the same manner as the property tax.

Explanation.—Supply of water for domestic consumption and use shall not be deemed to include a supply—

(a) for any trade, manufacture or business,

(b) for gardens or for purposes of irrigation,

(c) for building purposes,

(d) for fountains, swimming baths, public baths [2][. . .], within the municipality or for any ornamental or mechanical purpose;

(e) for animals, or for washing vehicles, where such animals or vehicles are kept for sale or hire;

but shall be deemed to include a supply—

(a) for flushing latrines,

(b) for all baths other than swimming baths or public baths.

(c) for the consumption and use of inmates of hotels, boarding-houses and the like and for baths used by such inmates.

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. The words 'tanks in or near temples and mosques' were omitted by section 2 (a) of the Madras District Municipalities (Amendment) Act, 1936 (Madras Act XXIII of 1936).

Sec. 131.—Payments due in respect of excessive use of water for domestic purposes can be recovered as a tax. 39 M.L.J. 58=11 L.W. 574=57 I.C. 718. Under S. 147 as amended in 1909, no agreement is necessary to make the person using water for domestic purposes in excess of the prescribed limits or for non-domestic purposes, liable for tax in respect of the water consumed by him. This liability is not in any way affected by the fact that the person prior to the passing of the Amending Act of 1909 entered into a contract with the Municipality for the use of water and was liable under the contract for using water for non-domestic purposes only. 39 M.L.J. 38=11 L.W. 574=57 I.C. 718. Mandatory injunction in respect of supply of water by Municipality cannot be granted.. I.L.R. (1939) All. 337=1939 A.L.J. 178 =1939 All. 375.

Sec. 131, *Explanation.*—The essential test of domestic use or consumption is the user and the nature of the consumption of the water.. The nature of the uses and consumption is the deciding factor. In order towards the user a non-domestic use for purposes of trade or business, the water must be used as a raw material for the purpose of the trade or business.

Where water is used and consumed by the servants of a cinema and by the visitors, and also used for the Coffee hotel, latrines and bush outs, all these are undoubtedly domestic uses, and water is not used as part of the stock-in-trade of the business of running the cinema (1953) 2 M.L.J. 37 =66 L.W. 394=1953 Mad. 864.

(4) [1][*Omitted.*]

Andhra Amendment: *S.* 131.

131. (a) In sub-section (1) the word "domestic" has been omitted;

(b) in sub-section (2) the word "building" has been substituted for the word "dwelling house," and the word "domestic" omitted; and

(c) the Explanation has been omitted, by Andhra Act IV of 1956.

Private water-supply for non-domestic purposes.

[2][132.] The [3][executive authority] may at his discretion supply water for any purpose other than domestic consumption and use on receiving a written application specifying the purpose for which such a supply is required and the quantity likely to be consumed.

Power of executive authority to supply water for non-domestic purposes.

S. 132. *Andhra Amendment*:

Section 132. has been repealed by Andhra Amendment Act IV of 1956.

[4][*Payment for water.*

132-A. (1) For all water supplied under section 131 or under section 132, payment shall be made on such basis, at such times, and on such conditions as may be laid down in the by-laws made by the Council, and shall be recoverable in the same manner as the property-tax.

(2) In particular and without prejudice to the generality of the foregoing power, such by-laws may—

(a) in cases of supply for domestic consumption and use, lay down the maximum free allowance to be made and the rates of charge to be levied in respect of water supplied in excess of such allowance; and

(b) in cases of supply whether for domestic consumption and use or for other purposes, or any class of such cases, lay down that the charge for water supplied shall be based on the number of taps allowed, irrespective of the quantity of water consumed.]

S. 132-A. *Andhra Amendment*:—

(a) In sub-section (1) the words "or under section 132" were omitted by Andhra Act IV of 1956;

(b) Clauses (a) and (b) of sub-section (2) were re-lettered as clauses (c) and (d) and new clauses (a) and (b) were inserted as follows by *ibid*:—

(a) provide for the classification of supply of water under the following categories, namely:

(i) Supply to residential buildings,

(ii) Supply to residential hotels,

(iii) Supply to shops, commerclal establishments (other than industrial undertakings) restaurants, eating houses, theatres and places of public amusement or entertainment,

(iv) supply to industrial undertakings,

(v) Supply to non-residential buildings not falling within the scope of category (ii), category (iii) or category (iv).

Explanation.—In this clause unless the context otherwise requires, the following expressions shall have the meanlngs assigned to them in the Madras shops and Establishments Act, 1947 (Madras Act XXXVI of 1947):—

LEG. REF.

1. Sub-section (4) was omitted by section 2 (b) ibid..

2. Sub-section (2) of section 132 was omitted, and sub-S. (1) was remembered as S. 132, by S. 3, *ibid.*

3. Vide Footnote 1 on page 115.

4. This heading and section were inserted by S. 4, *ibid.*

(a) Commercial establishment;
(b) eating house;
(c) "residential hotel",
(d) "restaurant";
(e) shop;
(f) theatre.

(b) provide for the levy of different rates of charge in respect of water supplied to the different categories specified in clause (a);

(c) in clause (c) as re-lettered for the words "for domestic consumption and use," the words, "to residential buildings," have been substituted; and

(d) in clause (d) as re-lettered, for the words "for domestic consumption and use or for other purposes or any class of such cases" the words, bracket and letter, "to residential buildings or to the other buildings of any category specified in clause (a) have been substituted. (Andhra Act IV of 1956).

Andhra Act IV of 1952 has inserted new new section 132-B, after section 132-A", as follows:—

"132-B. Acceptance of contributions exclusively towards the capital cost of pipe supply of water—(1) The Council may accept contributions from the owner or occupier of a building of any category specified in clause (a) of sub-section (2) of section 132-A exclusively towards the capital cost of pipe supply of water. ,

(2) The council may, in consideration of the Contribution mentioned in sub-section (1);

(a) arrange to supply water to any such building in preference to any other building and

(b) levy in respect of water supplied to any such building, rates of charge lower than those laid down by the council".

Supply beyond limits of municipality.

Supply without the municipality.

133. The council may with the sanction of and on such terms (if any) as may be approved by the [1][State Government] supply water to a local authority or other person without the municipality.

Cutting off water-supply.

Power to cut off water-supply.

134. (1) The [2][executive authority] may cut off the supply of municipal water from any premises—

LEG, REF.

1. The words 'Provincial Government' were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order; 1937; and for the word 'Provincial' the word 'State' was substituted by A.L.O., 1950.

2. These words were substituted for the word 'chairman' by section 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

Secs. 134-135.—Disconnection with the water main is a continuing breach giving rise to continuing cause of action. The duty of the Municipality is a continuing one. 1930 A.L.J. 94=118 I.C. 713=1924 A. 870. In carrying out a system of water supply extensions, additions and alterations can be done to meet new exigencies. 122 I.C. 495=1930 Lah. 526. The cutting off of the water supply by the Municipality for failure to pay the water-tax and halalkhor does not relieve the property owner of his obligation to pay the taxes. The Municipality would still be entitled to recover the taxes. 36 Bom.L.R. 990=1934 Bom. 462.

(a) if the premises are unoccupied;

(b) if any water-tax or any sum due for water for the cost of making a connexion or for the cost or hire of a meter or for the cost of carrying out any work or test connected with the water-supply which is chargeable to any person by or under this Act, is not paid within fifteen days after a bill for such tax or sum has been presented;

(c) if, after receipt of a notice from the [1][executive authority] requiring him to refrain from so doing, the owner or occupier continues to use the water or to permit it to be used in contravention of any by-law made under this Act;

(d) if the owner or occupier neglects within a period specified in any notice issued by the [1][executive authority] under any by-law made under this Act to put up a meter or to comply with any other lawful order or requisition;

(e) if the owner or occupier wilfully or negligently damages his meter or any pipe or tap conveying municipal water;

(f) if the occupier refuses to admit the [1][executive authority] into premises which he proposes to enter for the purpose of executing any work or of placing or removing any apparatus or of making any examination or inquiry in connexion with the water-supply, or prevents the [1][executive authority] doing such work, placing or removing such apparatus or making such examination or inquiry;

(g) if any pipes, taps, works or fittings connected with the municipal water-supply are found on examination by the [1][executive authority] to be out of repair to such an extent as to cause waste or contamination of water;

(h) if the owner or occupier causes pipes, taps, works or fittings connected with municipal water-supply to be placed, removed, repaired or otherwise interfered with in violation of the by-laws:

Provided that in cases under sub-clauses (e), (f), (g) and (h) the [1][executive authority] shall not take action unless notice of not less than twenty-four hours has been given to the owner or occupier of the premises.

(2) The expense of cutting off the supply shall be paid by the owner or occupier of the premises.

(3) In cases under clause (b) as soon as any money for non-payment of which water has been cut off together with the expense of cutting off the supply, has been paid by the owner or occupier, the [1][executive authority] shall cause water to be supplied as before on payment of the cost (if any) of reconnecting the premises with the municipal water-works.

(4) No action taken under this section shall relieve any person from any penalties or liabilities which he may otherwise have incurred.

Non-liability of council for reduction or stoppage of supply in certain cases.

135. The municipal council shall not be liable to any penalty or damages for cutting off the supply of water or for not supplying water (save in the case of express stipulation in an agreement for the supply of water for other than domestic purposes) in the case of any drought, or other unavoidable cause or accident, or the necessity for relaying or repairing pipes.

LEG. REF.

1. Vide footnote 2, page 117.

Sec. 135.—See 52 Mad. 779=1929 M. 746=57 M.L.J. 47.

S. 135. **Andhra Amendment.**—For the words "for other than domestic purposes", the words to "non-residential buildings", were substituted by Act IV of 1956.

Lighting.

136. The Municipal council shall, so far as the funds at its disposal permit, cause the public streets to be lighted and for that purpose shall provide such lamps and works as it thinks necessary.

Provision for lighting public streets.

Public drainage.

137. The municipal council shall, so far as the funds at its disposal may admit, provide and maintain a sufficient system of public drains.

Maintenance of system of drainage by council.

Andhra Amendment.—Andhra Act IV of 1956 has inserted new section, S. 137-A, after S. 137, as follows:

137-A. Owners of buildings to pay for clearance of sullage from their buildings by connecting their house-drains with public drains.—For the discharge of drainage from private premises by connecting housing drains with municipal drains, payment shall be made under any one of the bases mentioned in sub-section (2) as the council may, by resolution specify, at such times, and on such conditions as may be laid down in the by-laws made by the council, and shall be recoverable in the same manner as the property tax.

(2) The bases referred to in sub-section (1) shall be the following:—

(a) a monthly rent at such rate for each building as may be laid down in the by-laws;

(b) such percentage of the annual value of the building as may be laid down in the by-laws;

(c) the number of taps allowed, irrespective of the quantity of water consumed".

Private drainage.

138. All house-drains whether within or without the premises to which they belong and all private latrines and cess-pools within the municipality shall be under the control of the municipal council but shall be altered, repaired, cleansed and kept in proper order, at the

Control over house-drains, privies and cesspools.

Sec. 136.—According to S. 7 of the United Provinces Municipal Act, the Municipal Board was bound to make reasonable provision within the Municipality for lighting public streets. Where a private culvert is concerned, the Municipality has no obligation in respect of it, for it cannot be regarded as a 'public street' or even as 'street' as defined in the Act: 181 I.C. 174=1939 A.L.J. 101=A.I.R. 1939 All. 213.

Secs. 137 and 138.—'Gutter'—'Drain'—Meaning of. I.L.R. (1939) All. 270=179 I.C. 669=1939 A.L.J. 34=A.I.R. 1939 All. 95. No suit lies against the Municipality for non-feasance in respect of their duty under S. 278 of the Bengal Municipal Act to provide adequate drainage. The only remedy in such a case is under S. 281 of that Act which gives a right of intervention to the Local Government. 68 C. L.J. 267=42 C.W.N. 768=1939 C. 178.

Sec. 138.—Drains attached to the street vest in the municipality even though the sites of the drains may belong to the owners of shops abutting the street. 29 M. L.J. 222=11 L.W. 202=55 I.C. 493. In order that private persons may acquire right to the drains by adverse possession, it is not enough for them to show that they

expense of the owner of the premises to which the same belong or for the use of which they were constructed, and in conformity with by-laws and regulations framed by the council in this behalf.

Connexion of house-drains with public drains.

139. (1) The [1][executive authority] shall on application by the owner or occupier of any premises or the owner of a private street arrange, in accordance with the by-laws, for the connexion of the applicant's drain with any public drain at a distance not exceeding three hundred feet therefrom at the applicant's expense.

(2) If there is a public drain or outfall within a distance not exceeding one hundred feet of the nearest point of any premises [2][or if within such distance a public drain or out fall about to be provided or is in the process of construction] the [1][executive authority] may by notice direct the owner of the said precises to construct a drain leading therefrom to such drain or place of outfall, and to execute all such works as may be necessary in accordance with the by-laws and regulations at such owner's expense.

(3) If any premises are in the opinion of the [1][execuitve authority] without sufficient means of effectual drainage, but no part thereof is situated within one hundred feet of a public drain or its place of outfall, the [1][executive authority] may be notice direct the owner of the said premises to construct a cess-pool or septic tank or filters of such material, dimensions and description, in such position and at such level as the [1][executive aunhotity] thinks necessary, and to construct a drain or drains emptying into such cess-pool, tank or filters and to execute all such works as may be necessary in accordance with the by-laws and regulations:

Provided that—

(a) no requisition shall be made under this section on any person who has been exempted from payment of the property tax under [3][subsection (5) of section 83;]

(b) no person shall be required under this section to expend a sum exceeding five times the property tax on any such building, with the land assessed with it as part of the same premises or in the case of buildings exempted under section 83, five times the property tax which would be payable on such building with the land which would be assessed with it to the property tax if such building were not exempt and if any amount exceeding the said sum is expended, the excess shall be borne by the council.

Executive authority may close or limit the use of existing private drains.

140. (1) Where a drain connecting any premises with a public drain or other place set apart by the municipal council for the discharge of drainage is sufficient for the effectual drainage thereof and is otherwise unobjectionable, but is not, in the opinion of the [1][executive authority] adapted to the general drainage system of the municipality or of the part of the municipality in which such drain is situated, the [1][executive authority] with the approval of the council may—

LEG; REF.

1. These words were substituted for the word 'chairman' by section 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. Inserted by Madras Act XXVII of 1942.

3. There words and figures were substituted for the words; figures and letter 'section 84, clause (e)' by section 93 of the Madras District Municipalities (Amendment Act 1930 (Madras Act X of 1930).

---

were repairing the drains but they must show that the municipality was prevented

(a) subject to the provisions of sub-section (2) close discontinue or destroy the said drain and do any work necessary for that purpose; or

(b) direct that such drain shall, from such date as he specifies in this behalf, be used for sullage and sewage only, or for water unpolluted with sullage or sewage only, and by notice require the owner of the premises to make, at his own expense, an entirely distinct drain for water unpolluted with sullage or sewage, or for sullage and sewage.

(2) No drain may be closed, discontinued or destroyed by the [1][executive authority] under clause (1) (a) except on condition of his providing another drain as effectual for the drainage of the premises and communicating with a public drain or other place aforesaid; and the expense of the construction of any drain so provided by the [1][executive authority] and of any work done under clause (1) (a) shall be paid by the council.

Power of executive authority to drain premises in combination.

141. (1) When the [1][executive authority] is of opinion that any group or block of premises any part of which is situate within one hundred feet of a municipal drain already existing, or [2][about to be provided or in the process of construction] may be drained more economically or advantageously in combination than separately, the [1][executive authority] may, with the approval of the council, cause such group or block of premises to be drained by such method as appears to the [1][executive authority] to be best suited therefor and the expenses incurred by the [1][executive authority] in so doing shall be paid by the owners in such proportions as the council may decide.

(2) Not less than fifteen days before any work under this section is commenced, the [1][executive authority] shall give notice to the owners of—

(a) the nature of the intended work,

(b) the estimated expenses thereof, and

(c) the proportion of such expenses payable by each owner.

(3) The owners for the time being of the several premises constituting a group or block drained under sub-section (1) shall be the joint owners of every drain constructed, erected or fixed, or continued for the special use and benefit only of such premises and shall in the proportion in which it is determined that that they are to contribute to the expenses incurred by the [1][executive authority] under sub-section (1), be responsible for the expense of maintaining every such drain in good repair and efficient condition.

LEG. REF.

1. These words were substituted for the word 'chairman' by section 17 (1) of the Madras District Municipalities (Amendment) Act (XV of 1933).

2. Substituted by Madras Act XXVII of 1942.

---

from using the drains as drains. 39 M.L. J. 222=11 L.W. 202=55 I.C. 493. The municipal council has no right to possession of the space above the drain, but only a right of user for the discharge of its functions in connection with the drains and a person in possession of the pial over it would have a right to it against all but the true owner. If the Government is the true owner, as in this case, the title of the Government can be extinguished only by 60 years' adverse possession. 38 Mad. 6 =23 M.L.J. 479=17 I.C. 158. Though a person acquires a title to the site of a pial over a drain by adverse possession against the Municipal Council, the right of the latter to the drain is not affected and the council is entitled to remove the pial as an encroachment or obstruction under the Madras District Municipalities Act. (Ibid.)

Sec. 141.—Scope—Private drain alongside public street—Power of Municipal Council in respect of. See 1940 M. 423 =51 L.W. 30=(1940) 1 M.L.J. 155.

142. (1) Without the permission of the council, no person shall place or construct any fence, building, culvert, drain-covering, drain or other structure or any street railway or cable over, under, in or across any public drain, or stop up, divert, obstruct or in any way interfere with any public drain, whether it passes through public or private ground.

Building, etc., not to be erected without permission over drains.

(2) The [1][executive authority] may remove or otherwise deal with anything placed or constructed in contravention of sub-section (1) as he shall think fit, and the cost of so doing shall be recoverable from the owner thereof in the manner provided in section 344.

143. (1) The [1][executive authority] may by notice require the owner or occupier of any building or land adjoining a public street to construct culverts or drain-coverings over the side-channels or ditches at the entrances to the said building or land.

Construction of culverts or drain-coverings by owner or occupier.

(2) All culverts or drain-coverings or pials maintained over side-channels or ditches by the owners or occupiers of adjacent buildings or lands shall be of such form and size and consist of such materials and be provided with such means of ventilation as the [1][executive authority] may by notice require and shall be maintained and kept free from all obstruction at the expense of the said owners or occupiers.

144. The owner or occupier of any building in a public street shall, within fifteen days after receipt of notice in that behalf from the [1][executive authority] put up and thenceforward maintain proper troughs and pipes for catching and carrying the water from the roof and other parts of such building and for discharging such water in such manner as the [1][executive authority] may permit.

Maintenance of troughs and pipes for catching water.

Public latrines.

145. The council shall, as far as the funds at its disposal may admit, provide and maintain in proper and convenient places a sufficient number of public latrines and shall cause the same to be daily cleansed and kept in proper order.

Provision of public latrines and urinals.

LEG. REF.

1. These words were substituted for the word 'chairman' by section 17 (1) of the Madras District Municipalities (Amendment) Act (XV of 1933).

Sec. 142.—'Public drain' — Storm-water drain, not maintained by the Municipality. —A water-course which has been in existence for a very long time, serving as a storm-water drain, is a 'public drain' within the meaning of S. 142 of the Act, though it has not been provided, and is not maintained, by the Municipal Council and though it has nothing to do with the water-supply. 143 I.C. 90=37 L.W. 465 =1933 Mad. 428.

Secs. 142 and 143.—Where a person without erecting any new building over the drain in front of his house, merely repaired the masonry covering which had long been there, without permission from the Municipality, he could not be taken to have committed any act constituting an interference with the drain within the meaning of S. 211 of the District Municipalities Act, 1884. 21 M. 4=7 M.L.J. 273 (F. 23 B. 248). Any person wishing to make a structure or projection over a private drain is bound to obtain permission therefor provided the drain lies in a street. 1935 A.L.J. 1260=58 A. 480=1936 A. 56.

Sec. 145—Construction and scope—Public latrine constituting nuisance to private person—If authorised under Act.—Where the erection of a public latrine by a Municipality is found to constitute a nuisance to a private person near the locality, it cannot be taken to be authorised by S.

Private latrines.

Provision of latrines by owner or occupier.

146. (1) The [1][executive authority] may by notice require the owner or occupier of any building within the time specified in such notice to provide a latrine or alter or remove from an unsuitable to a more suitable place any existing latrine in accordance with the directions contained in such notice for the use of the persons employed in or about or occupying such building and to keep it clean and in proper order.

(2) Every owner or occupier of the ground on which any group of six or more huts stands shall provide latrines of such description and number and in such position as the [1][executive authority] may by notice require, within such time as may be fixed in the notice, for the use of the inhabitants of such huts.

Provision of latrines for labourers.

147. Every person employing workmen, labourers or other persons exceeding ten in number, shall provide and maintain for the separate use of persons of each sex so employed latrines of such description and number and in such position as the [1][executive authority] may by notice require, within such time as may be fixed in the notice.

Provision of latrines for markets, cart-stands, cattle-sheds, choultry, etc.

148. The [1][executive authority] may by notice require the owner or manager of a market, cart-stand, cattle-shed, choultry, theatre, railway station, dock, wharf or other place of public resort within the time specified in such notice to provide and maintain for the separate use of persons of each sex latrines of such description and number and in such position as may be specified in such notice.

LEG. REF.

1. These words were substituted for the word 'chairman' by section 17 (1) of the Madras District Municipalities (Amendment) Act (XV of 1933).

---

145 of the Madras District Municipalities Act, so as to disentitle the aggrieved party from suing for an injunction against the Municipality. 200 I.C. 729=53 L.W. 656 =1941 M.W.N. 502=A.I.R. 1941 Mad. 650=(1941) 1 M.L.J. 768.

Sec. 146.—See 49 Mad. 880=96 I.C. 500=1926 M. 763=50 M.L.J. 557 cited under S. 347. When a holding becomes unoccupied and unproductive of rent, the owner of the holding must apply under S. 111 of the Bihar and Orissa Municipal Act for remission of liability for a portion of Municipal taxes other than latrine-tax, but he is not bound to apply for remission of latrine-tax. 175 I.C. 475=19 Pat.L.T. 405=A.I.R. 1938 Pat. 391. 'Occupier' as defined in the Bihar and Orissa Municipal Act includes an owner in actual occupation of his own premises, but in the absence of an occupier for a holding which is actually unoccupied, the owner thereof cannot be deemed to be the occupier for purposes of payment of latrine-tax under S. 100 of the Act. The Municipality cannot therefore make the owner who has never been in actual occupation of his holding liable for latrine-tax under S. 111 of the Act. Quaere—Whether S. 111 of the Act applies at all to claims of the Municipality for latrine-tax. 175 I.C. 475=19 Pat.L.T. 405=A.I.R. 1938 Pat. 391. A had applied to the Municipal Board for permission to build a latrine on a certain strip of land to which B objected. Before the sanction was given, the parties referred their dispute to arbitration without the intervention of the Court. On the submission of the award, B applied to the Civil Court that the award be filed in Court. By this time the Board had given its sanction and so A contended that the award if filed and made a rule of Court would violate the provisions of S. 321, U. P. Municipalities Act: Held: that under section 184 of the Act, the sanction given could not beyond exempting A from any penalty or consequence to which he would otherwise be liable, confer or extinguish any right or disability. The sanction given by the Board was only binding on A. The rights and disabilities of the parties were determined by the award and so the award was binding on them. The Board was no party to it. The filing of the award there-

149. All latrines shall be so contructed as to screen persons using the same and, the filth from the view of persons passing by or residing in the neighbourhood and shall be kept clean and in proper order.

Latrines to be screened from view and kept clean.

General powers.

150. The [1][executive authority] may carry any cable, wire, pipe, drain or channel of any kind to establish or maintain any system of drainage, water supply or lighting, through, across, under, or over any road, street or place laid out for a road or street, and after giving reasonable notice to the owner or occupier, through, across, under, over or up the side of, any land or building in the municipality, and may place and maintain posts, poles, standards, brackets, or other contrivances to support wires and lights on any pole or post in the municipality not [2][vested in the

Power to carry wire, pipes, drains etc., through private property subject to causing as little inconvenience as possible and paying for direct damage.

LEG. REF.

1. Vide footnote (1) at p. 123.
2. These words were substituted for the words 'owned by the Government of India' by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

---

fore could not in any way override the provisions of S. 321 of the Act. I.L.R. (1937) All. 918=1937 A.L.J. 1158=A.I. R. 1937 All. 751.

In a prosecution for failure to comply with a notice calling upon the accused to close a privy the only question before the Court is whether the accused had failed to comply with the notice properly issued to him. The Court has no jurisdiction to consider whether the erection of the privy which has been ordered to be closed is or is not objectionable. That is a matter which is within the province and jurisdiction of the Municipal Board. 154 I.C. 45=1935 Oudh 197. A conviction for disobedience of an order issued, by the Chairman of the Municipal Council calling on the petitioner to remove his newly erected latrine to another place cannot be sustained when the petitioner urged that his latrine had been in existence for over twenty years and that question was not gone into by the Court. 1933 M.W.N. 223. A channel for passage of water to be 'drain' it must be shown that offensive matter passes through it; and a cesspool is a pit into which water is discharged from drain as defined above. 1 Pat.L. W. 774=40 I.C. 552. The word 'latrine' includes watercloset and conveniences with water connections. 50 I.C. 247=1919 M. W.N. 712. The Committee is the primary body to determine when its power is to be exercised and the Court will not interfere unless it has used its power in a wanton manner or in bad faith. 1930 Lah. 477 (1)=129 I.C. 684. See 90 P. R. 1898. The Legislature has vested the Board with absolute power to direct the closing or the removal of any latrine, etc., without assigning any reason for such direction. Even in cases where malice is proved the Civil Court is powerless to grant any relief to the person aggrieved. 1927 All. 432=101 I.C. 446.

Shops—Imposition of latrine-tax—Opinion of Commissioners.—On a general revision of assessment, the Municipal Commissioners at a special meeting merely adopted the assessment list prepared by the Sub-Deputy Collector without any resolution on the question whether the shops which had not till then been assessed to latrine-tax required latrines. Held, that it was not a question in which a requirement of law was irregularly performed. There was a total absence of compliance with a condition without which the tax could, not be imposed. The plain reading of the section of the Act left no doubt that the shops were exempt from taxation unless the commissioners at a meeting formed an opinion that they required latrines, urinals or cesspools, and this formation of opinion by the commissioners could not be presumed from the fact that they accepted the assessment list containing the latrine-tax. 148 I.C. 918=1934 Pat. 83.

Sec. 149.—See 50 M.L.J. 557 cited under section 347, supra.

Sec. 150: Notice—When necessary.—The section says that a notice must be given to the owner or occupier if the committee intends to traverse 'any land or building'. Clearly, then, there is a distinction between road and street on the

[1](Government) [2](* * *)] and may do all acts necessary or expedient for repairing or maintaining any such cable, wire, pipe, drain, channel, post, pole, standard, bracket or other similar contrivance in an effective state for the purpose of which it is intended to be used or for removing the same:

Provided that such work shall be done so as to cause the least practicable nuisance or inconvenience to any person:

Provided further that the [3][executive authority] shall, with the sanction of the council, pay compensation to any person who sustains damage by the exercise of such power.

Prohibition against making connexion with mains without permission.

151. (1) No person shall, without the permission of the [1][executive authority] make any connexion with any municipal cable, wire, pipe, drain or channel or with the house connexion of any other person.

(2) The [1][executive authority] may by notice require any connexion made in contravention of sub-section (1) to be demolished, removed, closed, altered or re-made.

[S. 151. [**Andhra amendment**].—For the words "house connexion" in sub-section (1) of section 151, Andhra Act IV of 1956, has substituted the word "connexion".]

Powers is respect of works outside the municipality.

152. (1) The municipal council shall not undertake new works beyond the limits of the municipality without the sanction of the [4][State Government].

(2) The council may in the execution and for the purpose of any works beyond the limits of the municipality sanctioned by the [1][State Government] whether before or after the passing of this Act, exercise all the powers which it may exercise within the municipality throughout the line of the country through which conduits, channels, pipes, lines of posts and wires and the like run, and with the sanction of the [1][State Government]—

LEG. REF.

1. Substituted from 'Crown' by A.L. O., 1950.
2. Words 'and under the control of the Central Government' omitted by A.A.O., 1950.
3. The words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act 1933 (Madras Act XV of 1933).
4. Substituted by A.I.L.O., 1937 and A.L.O., 1950.

---

one hand, and land or building on the other. That even if a committee is going to lay a pipe under or across a public street it must give notice to the owners or occupiers of adjacent buildings, is a proposition that could readily be made a reductio ad absurdum. 31 P.L.R. 196=1930 Lah. 526. Where a Municipal Committee laid pipes on a part of the public road for the purpose of water-supply and an adjacent owner sued for an injunction and for compensation: held, that the land in question being a street it was not incumbent on the Municipality to give notice to the adjacent owner before commencing the work and that the plaintiff was not entitled to an injunction. Held, also, that compensation could not be awarded to the plaintiff in the absence of proof of damage. (Ibid.)

Damage by Accumulation of Water—Injunction against Municipality.—The Municipal Committee are not entitled under any law to keep open as a channel or as pit passing through another's land something which is not used by way of drainage or sewerage. A person whose property is damaged by accumulation of water is entitled to an injunction against the Municipal Committee, ordering them to close the opening passing under his house. 1933 Lah. 1003. In carrying out a system of water-supply, extensions, additions and alterations can be done to meet new exigencies, and the agreement that once a scheme of water-supply has been determined on by a committee it may carry out that scheme but it can never afterwards do anything in the way of extensions, cannot command acceptance. 122 I.C. 495=1930 Lah. 526.

(a) over any lake, tank or reservoir, from which a supply of water for drinking, for producing electric energy or for other purposes is derived and over all lands within one mile of the high water level of any such lake tank or reservoir,

(b) over any water-course from which a supply of water for drinking, for producing electric energy or for other purposes is derived within one mile above and half a mile below any point at which water is taken for such use and

(c) over any lands used for sewage farms, sewage disposal tanks, filters and other works connected with the drainage of the municipality.

CHAPTER VIII.

Scavenging.

Municipality to arrange for the removal of rubbish and filth.

153. Every municipal council shall make adequate arrangements for—

(a) the regular sweeping and cleaning of the streets and removal of sweepings therefrom;

(b) the daily removal of filth and the carcasses of animals from private premises; and

(c) the daily removal of rubbish from dust-bins and private premises; and with this object, it shall provide;

(i) depots for the deposits of filth, rubbish and the carcasses of animals;

(ii) covered vehicles or vessels for the removal of filth;

LEG. REF.

1. See footnote 4 in p. 125.

Sec. 153 to 159.—It is not the duty of rate-payers to carry the night-soil from the premises to the municipal depot wherever situated. It is the duty of the municipal council to remove the rubbish and offensive matter from outside the occupier's building or land to the depot which they are bound under the Act to provide, and they are bound to have covered vehicles or vessels for the removal of offensive matter. It is illegal for them to charge any fees for such transport. 43 M. 905=12 L.W. 411=59 I.C. 697. A Municipal Committee which collects taxes in order to be able to discharge certain statutory duties laid on them cannot expect others to discharge these duties for them; and they cannot claim to make the malguzars responsible for the sanitation of their abadi lands on the mere ground that those lands are included in the municipal area. The municipality are not consequently entitled to call on the malguzars of a village situated within the municipal limits to construct a latrine in the abadi for the use of the inhabitants of the Basti. 20 N.L.J. 238.

Sec. 153.—The scheme of Ss. 153 to 159 considered by Napier, J., in **43 M.** 905=12 L.W. 411=59 I.C. 697. The contract referred to in the old S. 154 relates only to removal of offensive matter from inside the rate payer's building to the outside, and the fees for such removal can be charged only after the approval of the Governor-in-Council has been obtained. 43 M. 905. The contract referred to in the said section is an express contract in writing, signed by the municipal councillors as per requirement of S. 45 of the Act, and an implied contract to pay the charges, even assuming that it could be inferred from the conduct of the plaintiff is not enforceable, as it contravenes the express provisions of the Act. 43 M. 905. The erection of latrine under the orders of a municipality on a site approved by the latter does not render the owner exempt from liability in damage, to a neighbouring occupier. The power given to the municipality to supervise the erection of a latrine is a permissive obligation and should be exercised without more injury to private interests than is absolutely necessary. 42 M. 796=37 M.L.J. 224. As to recovery of latrine-taxes, see 182 I.C. 457=20 Pat.L.T. 613=1939 Pat. 236.

(iii) vehicles or other suitable means for the removal of the carcasses of large animals and rubbish;

(iv) dust-bins for the temporary deposit of rubbish.

[1][154. (Omitted.)]

[1][155. (Omitted.)]

Contributions from persons having control over places of pilgrimage, etc.

[2][156. Where a mosque, temple, mutt or any place of religious worship or instruction or any place which is used for holding fairs, festivals or for other like purposes is situated within the limits of a municipality or in the neighbourhood thereof and attacks either throughout the year or on particular occasions a large number of persons, any special arrangements necessary for public health, safety or convenience whether permanent or temporary shall be made by the municipal council, and the council may require the trustee or other person having control over such place to make such recurring or non-recurring contribution as the [3][State Government] may determine to the funds of the municipal council.]

Prohibition of improper disposal of carcasses, rubbish and filth.

157. No person , shall after due provision has been made under section 153 by the municipal council for the deposit and removal of the same,

(a) deposit the carcasses of animals, rubbish or filth, in any street, or on the verandah of any building, or on any unoccupied ground alongside any street, or on any public quay, jetty or landing-place, or on the bank of a water-course or tank; or

(b) deposit filth or carcasses of animals in any dust-bin or in any vehicle not intended for the removal of the same; or

(c) deposit rubbish in any vehicle or vessel intended for the removal of filth save for the purpose of deodorizing or disinfecting the filth.

Prohibition against keeping filth on premises too long, etc.

[4][158.] No owner or occupier of any premises shall keep or allow to be kept for more than twenty-four hours any filth on such premises or any building or on the roof thereof or in any out-building or any place belonging thereto, or fail to comply with any requisition of the [5][executive authority] as to the construction, repair, paving or cleansing of any latrine on or belonging to his premises.

LEG. REF.

1. These sections were omitted by S. 94 of the Madras District Municipalities (Amendment) Act (X of 1930).

2. This section was substituted for the original by section 95 ibid.

3. The words 'Provincial Government' were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and the word 'State' was substituted for the word 'Provincial' by A.L.O., 1950.

4. Sub-section (1) of S. 158 was omitted and sub-S. (2) was renumbered as S. 158 by S. 96 (1) of the Madras District Municipalities (Amendment) Act (X of 1930).

5. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act (XV of 1933).

Sec. 158.—A municipal council is not bound to call upon the accused to provide movable receptacles under the District Municipalities Act before proceeding to take action under S. 264-A. 42 M. 57=35 M.L.J. 442=48 I.C. 161. A person convicted for storing fish in an unlicensed place may be again charged and convicted of the same offence for a different period. 2 Cr.L.R. 444.

[1][. . . . .].

Prohibition against allowing outflow of filth.

159. No owner or occupier of any premises shall allow the water from any sink, drain, latrine or stable, or any other filth to flow out of such premise to any portion of a street except a drain or a cesspool or to flow out of such premises in such a manner as to cause an avoidable nuisance by the soakage of the said water or filth into the walls or ground at the side of a drain forming a portion of a street.

Prohibition against using any cart without cover in the removal of filth, etc.

160. No person shall, in the removal of filth, use any cart or receptacle not having a covering proper for preventing the escape of the contents thereof, or of the stench therefrom, or intentionally or negligently spill any filth in the removal thereof, or omit carefully to sweep and clean every place in which any such filth has been spilled, or place or set down in any public place any filth whether in a vessel closed or open.

Prohibition against throwing rubbish or filth into drains.

161. No person shall put or cause to be put any rubbish or filth into any public drain not intended for rubbish or filth or into any drain communicating with any such public drain.

CHAPTER IX.

Streets.

Public streets.

Maintenance and repair of streets.

162. [2][(1)] The municipal council shall, at the cost of the municipal fund, cause the public streets and bridges to be maintained and repaired and may from the same fund meet the cost of all improvements to the same which are necessary or expedient for the public safety or convenience.

LEG. REF.

1. The proviso to S. 158 as remumbered was omitted by S. 96 (2) of the Madras District Municipalities (Amendment) Act (X of 1930).

2. S. 162 was renumbered as sub-S. (1) of S. 162 and a new sub-S. (2) was added by S. 97, ibid.

Sec. 159.—The occupier of land in a municipal area can be convicted for letting offensive water flow into the street, although no side drains have been provided for the streets. 18 Cr.L.J. 384=38 I.C. 768 (15 M. 91; 31 M. 220, Foll.). See also 42 M. 796=37 M.L.J. 224=52 I.C. 921 cited under S. 155, supra.

Sec. 162.—Where a part of a street vested in a municipality is effectively occupied and acquired by adverse possession against it, it ceases to be a street and the municipality has no power to remove the encroachment on it under S. 168 of the Act. 38 M. 456=25 M.L.J. 297=20 I.C. 956. It is the duty of municipalities to lay and maintain roads, so that the public may pass over them safely and they are liable for the injuries resulting to the public through the negligent or improper performance of that duty. 41 M. 538=44 I.C. 308. Municipalities in India do not act in the exercise of a sovereign power or as agents of the State in laying or maintaining roads. 41 M. 538=44 I.C. 308 (Distinguishing 1915 M.W.N. 30). Suit to restrain municipal committee from leasing public street—Power to lease conferred by subsequent amending Act—Right to injunction. 1934 L. 986. As to powers of disposal of public streets by the municipality, see 1936 L. 296. In the case of statutory bodies entrusted with the performance of public trusts, their liability cannot be shifted on to a contractor employed by them for a particular purpose. They may bargain with the contractor that he shall perform the duty and stipulate for an indemnity from him if it is not performed. But they are not thereby themselves relieved from liability to those injured by the failure to perform it. 41 M. 538=44 I.C. 308. Municipal corporations in India are liable for acts of misfeasance.

41 M. 538=44 I.C. 308. The liability of statutory bodies for negligence is not based on whether a profit is derived by the levy of a cess or toll from the public. The question whether it gives them an income over expenditure is not a criterion for enforcing liability. 41 M. 538=44 I.C. 308. The Municipal Committee is authorised to lease out any land used by it for a public street and no longer required therefor. 157 I.C. 966=37 P.L.R. 160. A Municipal Committee in which a public highway is vested has no power to treat it as personal property. It may close a street temporarily for a public purpose or permanently, but in the latter case, it is bound to provide the public with another road. The power of closure under S. 169 is limited and does not imply the power to obstruct. 16 L. 517=37 P.L.R. 753=1935 Lah. 196. See also 41 P.L.R. 234=A.I.R. 1939 Lah. 44. Burden of proof that a site is public street lies on the Crown. 1930 A.L.J. 244=120 I.C. 547=1930 A. 26.

Secs. 162-164.—There is no exhaustive definition of 'land' in the Bihar and Orissa Municipal Act and the phrase 'may sell, lease, exchange or otherwise dispose of any land' in S. 62 seems to be wide enough to cover 'road'. But even if it be held that the word 'land' does include a road, yet the Municipality has not an unrestricted right to sell such road. At its very highest, the power given to the Municipality by S. 62 is to sell, lease, exchange or otherwise dispose of any land not required as a road or for other purposes of the Act. If such land is still required for any of the purposes of the Act, then it cannot be disposed of under the powers given by S. 62. 18 Pat. 735=20 Pat.L.T. 810=A.I.R. 1939 Pat. 683. The by-laws made under S. 185 of the Bihar and Orissa Municipal Act restrict the rights of the Municipality to grant licences for the use or occupation of any public road. In no case can they grant a licence for the erection of any permanent booth or stall, and the maximum period for which they can grant a licence for a temporary booth or stall is one year. A Municipality cannot, therefore, validly grant a lease of a piece of road for a period of five years with powers to renew which gives the lessee a right to erect permanent structures for the sale of articles. Under such a lease, the lessee has no right to erect permanent structures to the prejudice of the owners of land abutting the road. Such structures are a serious infringement of one of their most valuable rights, a right of access to the highway along the whole length of their boundary and so they are entitled to their removal. 18 Pat. 735=184 I.C. 52=20 Pat. L. T. 810=A.I.R. 1939 Pat. 683.

Proviso to S. 169 (g) is of considerable importance. The Municipal Committee cannot act arbitrarily and prejudice the rights of the public in disposing of a part of the public street on the mere pretext, without any substance behind it, that it is no longer wanted as a public street. Where, by doing so, they will cause damage to the vested interests of members of the public, the burden lies heavily upon them to prove that in fact the portion of land they propose to dispose of, is no longer required as a public street. 41 P.L.R. 548=A.I.R. 1939 Lah. 199. The power of sale, lease or exchange given to the Commissioners under S. 62 of the Bihar and Orissa Municipal Act is not confined to land which has been acquired by the Municipality under that section, but extends to land which is vested in the Municipality by reason of S. 58 of the Act. 18 Pat. 735=184 I.C. 52=20 Pat. L.T. 810=A.I.R. 1939 Pat. 683. Under S. 172 (c) of the Bihar and Orissa Municipal Act, the power given to the Commissioners to turn, divert, discontinue or close any public road, is a power to do so when they are carrying out the road development or road improvement scheme. The section does not empower the Commissioners to close any public road if they so think fit. (Ibid.) Cl. (f) of S. 172 of the Bihar and Orissa Municipal Act must be read with the preceding clauses, and it does not give the Commissioners an unrestricted right to dispose of any roadway. (Ibid.)

Secs. 163, 180 and 182: Encroachment on public streets—Duty to remove—Right of municipality and Government to sanction.—All public streets in a municipality vest in the municipal council and continue to so vest in the absence of a notification by the Government withdrawing the street from the control of the council. The streets continue to be public streets and no encroachments can be made on any part of it. The municipality has no power to sanction encroachment on public streets and a duty is cast on the executive authority to remove or alter the encroachment unless the municipality, with the special sanction of the Government closes down that part on which the encroachment has been made. 50 Bom. 674, rel. on.

The Government too has no power, while the streets continue to be public streets, to assign the streets to others or to allow others to encroach upon them causing public nuisance. They cannot invoke Madras Land Encroachment Act III of 1905 in aid of the existence of such a power in them; that Act gives no power to the Government to ignore the rights of the public when the streets continue to be public streets. (1957) 2 An.W.R. 546=1957 An.L.T. 930=1957 Andh.Pra. 586.

[1][(2) The council may entrust to any other local authority with the consent of such authority the maintenance of any public street or portion thereof, the cost of maintenance being provided by the council.]

Powers of municipal authorities.

163. (1) The council may—

(a) lay out and make new public streets;

(b) construct bridges and sub-ways;

(c) turn, divert or with the special sanction of the [2][State Government] permanently close any public street or part thereof;

(d) widen, open, extend or otherwise improve any public street.

(2) Reasonable compensation shall be paid to the owners and occupiers of any land or buildings which are required for or affected by any such purposes.

Power to dispose of permanently closed streets.

164. (1) When a public street is permanently closed under section 163, the municipal council may, with the sanction of the [2][State Government] dispose of the site or of so much thereof as is no longer required, in such manner as may be approved by the [2][State Government], provided that due compensation is made to any person injured by such closing.

LEG. REF.

1. S. 162 was renumbered as sub-S. (1) of S. 162 and a new sub-S. (2) was added by S. 97 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. The words 'Provincial Government' were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word 'Provincial' the word 'State' was substituted by A.L.O., 1950.

Sec. 163.—The right of a municipal council to the street and the drains is not a mere right of easement but is a special right of property previously unknown to law, but created by Statute. 38 M. 6=23 M.L.J. 479=17 I.C. 158. It is not open to the municipality to give up the rights of the public in a highway by any act of their own, but that would not affect the capacity of a person in adverse possession to acquire a right which would affect the public. 38 M. 6. In an action to restrain the Municipality from recovering a sum of Rs. 44 from the plaintiff for the use and occupation of certain municipal land on the ground that the municipality had no right to levy the fees, held, that the foundation of a claim for the use and occupation of land was either express or implied contract; that there was no express contract and a contract could only be implied if it could have been possible; that an oral contract for not more than Rs. 50 could be made by the municipality and it had the power to charge a fee for the use of land and so the municipality was entitled to claim the sum. 144 I.C. 667=29 N.L.R. 57=1933 N. 93. Where a street vests in and belongs to the public authority the owner of the land over which the public street runs is not completely deprived of all his rights to everything below the street and to the air space above it. The effect of such vesting is that owner's right to everything below the street and to the air space above it is limited. The owner for example is not entitled to interfere with the municipality in the discharge of its duties in maintaining and keeping open a street. It is equally certain that neither the municipality nor the occupiers of houses abutting a public street are entitled to appropriate any mineral which may be beneath the street, the ownership of which remains with the proprietor. The proprietor is also entitled to certain rights to the air space above the street but what constitutes an infringement by municipality or by members of the public of the rights of the proprietors to the said space above a street is a question of degree. The municipality are clearly in their capacity as custodians of the public interest entitled to take reasonable steps for the convenience and comfort of the public who use the public street. The owners and occupiers of the houses or shops which abut on the public street are entitled to take reasonable steps for their own convenience and comfort and for the convenience and comfort of the members of the public visiting their houses and their shops. The erection of a shelter at a reasonable height from the ground to protect the shops and houses and afford shelter to members of the public frequenting the shops and houses

(2) In determining such compensation, allowance shall be made for any benefit accruing to the same premises or any adjacent premises belonging to the same owner from the construction or improvement of any other public street at or about the same time that the public street, on account of which the compensation is paid, is closed.

Acquisition of land and buildings for improvement of streets.

165. (1) The council may acquire—

(a) any land required for the purpose of opening, widening, extending, or otherwise improving any public street, or of making any new public street, and the buildings, if any, standing upon such land; and

(b) any land outside the proposed street alignment, with the buildings, if any, standing thereupon:

Provided that, in any case in which it is decided to acquire any land under clause (b) of this sub-section, the owner of such land may retain it by paying to the municipal council an annual sum to be fixed by the council in that behalf, or a lump sum to be fixed by the council, not being less than twenty-five times such annual sum and subject to such conditions as the council thinks fit as to the removal of the existing building, if any, the description of the new building (if any) to be erected, the period within which the new building (if any) shall be completed and any other similar matters.

(2) If any sum payable in pursuance of the proviso to sub-section (1) in respect of any land be not duly paid, it shall be recoverable in the manner provided by this Act for the collection of taxes, and, if not so recovered, the [1][executive authority] may enter upon the land, and sell it, with any erections standing thereon, by public auction subject to the conditions, if any, imposed under sub-section (1) above and may deduct the said sum and the expenses of the sale from the proceeds of the sale and shall pay the balance (if any) to the defaulter.

(3) Any sum paid in pursuance of the proviso to sub-section (1) or recovered under sub-section (2) in respect of any land shall be left out of account in determining the annual value of such land for the purpose of assessing it to the property-tax.

(4) Any land or building acquired under sub-section (1), clause (b), may be sold, leased or otherwise disposed of after public advertisement, and any conveyance made for that purpose may comprise such conditions as the council thinks fit as to the removal of the existing building, if any, the description of the new building (if any) to be erected, the period within which the new building (if any) shall be completed and any other similar matters.

(5) The council may require any person to whom any land or building is transferred under sub-section (4) to comply with any conditions comprised in the said conveyance before it places him in possession of the land or building.

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

---

is a reasonable step which the owners and occupiers are entitled to take and which it is within competence of the municipality to sanction. 56 A. 784=1934 A.L.J. 418=1934 A. 338. The Municipal Board has power to enable a private individual to make a drain and the rights of the person aggrieved by such permission are limited to making an objection to the Board. 1930 A.L.J. 1039=124 I.C. 556 =1930 A. 531.

Power to prescribe building line and street alignment.

166. The council may—

(a) prescribe for any public street a building line or a street alignment or both;

(b) from time to time define a fresh line in substitution for any line so defined or for any part thereof:

Provided that in either case—

(i) at least one month before the meeting of the council at which the matter is decided, public notice of the proposal has been given and special notice thereof has also been put up in the street or part of the street for which such line is proposed to be defined; and

(ii) the council consider all objections to the said proposal made in writing and delivered at the municipal office not less than three clear days before the day of such meeting.

Buildings not to be constructed within street alignment or building line.

167. (1) No person shall construct any portion of any building within a street alignment defined under section 166.

(2) No person shall erect or add to any building between a street alignment and a building line defined under section 166 except with permission of the [1][executive authority] who may when granting permission impose such conditions as the council may lay down for such cases.

Setting back projecting buildings or walls.

168. (1) When any building or part thereof abutting on a public street is within a street alignment defined under section 166, the [1][executive authority] may, whenever it is proposed,

(a) to rebuild such building or take it down to an extent exceeding one-half thereof above the ground level, such half to be measured in cubic feet or

(b) to remove, reconstruct or make any addition to any portion of such building which is within the street alignment;

in any order which he issues concerning the rebuilding, alteration or repair of such building, require such building to be set back to the street alignment.

(2) When any building or any part thereof within the street alignment falls down or is burnt down or is, whether by order of the [1][executive authority] or otherwise, taken down, or when any private land without any building thereon lies within the street alignment, the [1][executive authority]

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

Secs. 167 and 183: Building licence—Sanction to construct house in accordance with plan.—Where a licence granted by a Municipality for putting up a building according to the plan submitted to the Municipality by the owner provides that the street alignment of 6 feet under S. 167 of the Act should be strictly observed, if the owner after constructing the building according to the plan adds a pial offending S. 167, the Municipality can order demolition of the pial. A pial is part of a building and it is therefore in breach of the licence to build a pial. S. 183 of the Act does not deal with pials which do not overhang a street; it deals with verandahs in the nature of balconies which overhang a street. 196 I. C. 261=53 L.W. 712=1941 M.W.N. 443=A.I.R. 1941 Mad. 657=(1941) 1 M.L.J. 624.

Sec. 168: Applicability.—S. 168 applies to a person who is reconstructing his house and who because of an order of the Municipality has to keep his house out of the street alignment. 53 L.W. 712=1941 M. W.N. 443=A.I.R. 1941 Mad. 657=(1941) **1 M.L.J. 624.**

may forthwith take possession on behalf of the council of the portion of land within the street alignment and, if necessary, clear it.

(3) Land acquired under this section shall be deemed a part of the public street and shall vest in the municipal council.

(4) When any building is set back in pursuance of any requisition made under sub-section (1), or when the [1][executive authority] takes possession of any land under sub-section (2), the council shall forthwith make full compensation to the owner for any direct damage which he may sustain thereby.

Explanation.—The expression 'direct damage' as used in sub-section (4) with reference to land means the market value of the land taken and the depreciation, if any, in the ordinary market value of the rest of the land resulting from the area being reduced in size; but does not include damage due to the prospective loss of any particular use to which the owner may allege that he intended to put the land, although such use may be injuriously affected by the reduction of the site.

Setting buildings forward to improve line of street.

169. The council may, upon such terms as it thinks fit, allow any building to be set forward for the purpose of improving the line of a public street and may, by notice, require any building to be so set forward in the case of reconstruction thereof or of a new construction.

Explanation.—For the purpose of this section a wall separating any premises from a public street shall be deemed to be a building: and it shall be deemed a sufficient compliance with permission or requisition to set forward a building to the street alignment if a wall of such material and dimensions as are approved by the [1][executive authority] is erected along the said line.

Projected streets.

170. (1) The council may prepare schemes and plans of proposed public streets, showing the direction of such streets, the street alignment and building line on each side of them, their intended width and such other details as may appear desirable.

(2) The width of such proposed streets shall not [2][ordinarily] be less than forty feet, or in any area covered by huts, twenty feet:

[3][* * *]

(3) It shall be the duty of the council to lay out public streets in areas covered by huts, so far as may be practicable, both for the purpose of securing proper ventilation for huts in such areas, and in view to the contingency of buildings being erected therein.

(4) When any plan has been prepared under sub-section (1), the street to which it refers shall be deemed to be a projected public street and the provisions of section 168 shall apply to all buildings, so far as they stand across the street alignment or building line of the projected street.

Watering of streets.

171. The council shall, so far as it considers it requisite for the public convenience, and so far as funds permit, cause the chief public streets to be watered, and for that

---

LEG. REF.

1. Vide footnote 1 on p. 132.
2. This word was inserted by S. 98 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).
3. The proviso to sub-section (2) was omitted by section 98 (ii) ibid.

purpose may provide such water-carts, animals and apparatus as it thinks necessary.

Temporary closure of streets.

172. The [1][executive authority] may by an order in writing temporarily close any street to traffic for repair, or in order to carry out any work connected with drainage, water-supply or lighting or any of the purposes of this Act:

Provided that such work shall be completed and such street reopened to traffic with all reasonable speed.

Protection of appurtenances and materials of streets.

173. It shall not be lawful for any person, without the permission of the [1][executive authority], to displace, take up, or make any alteration in the fences, posts, pavement, flags or other materials of any public street.

Power of municipality to recover expenses caused by extraordinary traffic.

174. When by a certificate of an officer of the Government Public Works Department of a rank not below that of Executive Engineer it appears to the council that, having regard to the average expense of repairing roads in the neighbourhood, extraordinary expenses have been incurred by the municipal council in repairing a street by reason of the damage caused by excessive weight passing along the street or extraordinary traffic thereon, the council may recover in the Civil Court having jurisdiction from any person by or in consequence of whose order such weight or traffic has been conducted the amount of such expenses as may be proved to the satisfaction of such Court to have been incurred by such council by reason of the damage arising from such weight or traffic as aforesaid:

Provided that any person against whom expenses are or may be recoverable under this section may enter into an agreement with the council for the payment to it of a composition in respect of such weight or traffic

---

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

Sec. 172.—The public have a right to use the full breadth of a public road and any obstruction to such use amounts to misfeasance, see 41 M. 538=44 I.C. 308. Whether a public body can be liable for mere non-feasance, see 41 M. 438=44 I.C. 308. Whether the making of roads by the Government is an act of sovereign power. (Ibid.). Municipal corporations in India are liable for acts of misfeasance (Ibid.). Municipality can permanently close a street for a particular class of traffic though it causes hardship to some individuals. 50 I.C. 215. See also 1926 A. 538. Greater portion of road being closed and becoming useless for the general public —Remaining portion useful only to plaintiff —Power of Municipality to sell this portion of the road which is no longer required for use by the general public. See 56 C. 280 =32 C.W.N. 1055=115 I.C. 515=1929 C. 33. The property in all public streets and things existing on or appertaining to such streets vests in the Municipal Board. Hence in the absence of any resolution of the Board directing the closing of a public lane and in the absence of any evidence to show that the Municipal Board had delegated its power to the Chairman of the Public Works Committee, the Chairman of the Public Works Committee cannot direct the closing of the lane and his order cannot be regarded as an order of the Municipal Board closing the public lane. Such an order of the Chairman cannot prevent the plaintiff from seeking relief against the defendants in respect of the encroachment made by them on the land in suit which has been found to be a public lane. 147 I.C. 107=11 O.W.N. 149=1934 Oudh 100.

Secs. 174 and 303.—See 1941 M. 657= 53 L.W. 712=(1941) 1 M.L.J. 624.

and thereupon the person so paying shall not be subject to any proceedings under this section.

[1][174-A. Omitted.]

Private streets.

Owner's obligation to make a street when disposing of land as building sites.

175. If the owner of any land utilizes, sells, leases or otherwise disposes of such land or any portion or portions of the same as sites for the construction of buildings, he shall, save in such cases as the site or sites may abut on an existing public or private street, lay down and make a street or streets or road or roads giving access to the site or sites and connecting with an existing public or private street.

Making of new private streets.

176. (1) Any person intending to make or lay out a new private street shall send to the municipal office a written application with plans and sections showing the following particulars, namely:—

LEG. REF.

1. Section 174-A was omitted by section 6 (i) of the Madras Traffic Control Act (1938) (Madras Act V of 1938).

Sec. 174-A.—Under S. 174-A read with S. 313 (1) of the Madras District Municipalities Act, it is the user of the motor lorry that is relevant; it is immaterial where the hiring takes place. Where a lorry registered for private trade is used on the public streets in a Municipality for transporting goods from a place outside the Municipal area without the requisite licence for a lorry plying for hire, it must be held that it is plying for hire without a licence and the owner of lorry is liable to conviction under S. 174-A read with S. 313 (1). 49 L.W. 494=183 I.C. 784=1939 M.W.N. 338=A.I.R. 1939 Mad. 524=(1939) 1 M.L.J. 700. The words 'plying for hire within the limits of Amraoti Town Municipality,' occurring in R. 1, cannot be confined to the narrow interpretation that the whole of the service which is offered must take place within the limits of the Municipality and that otherwise the rules do not apply. Hence vehicles operating as a regular service between Amraoti Town and Chadur Bazar and picking up passengers within limits of the Amraoti Town Municipality ply for hire within the limits of the Amraoti Town Municipality. 181 I.C. 520=A.I.R. 1939 Nag. 171. Per Iqbal Ahmad, J.—Regulation of traffic is something distinct from regulation and control of vehicles. The word 'streets' in the phrase 'traffic in streets' means those portions of streets over which the public have right to pass and Municipal Boards are authorized to regulate traffic on such portions. The phrase 'traffic in streets' connotes the act of passing to and fro in the streets and not the standing of vehicles at a particular place fixed as stand. The fixing of stands or the provision about motor cars or lorries plying for hire being allowed to halt only at the stands fixed, does not amount to regulation of traffic in the streets within the meaning of the by-law but is regulation of vehicles while not in traffic in the streets. Hence the Municipal Board is not empowered by S. 298-H (b) to make by-law No. 2 and the said bye-law is therefore ultra vires of the Board. 181 I.C. 1=1939 A.L.J. 500=A.I.R. 1939 All. 466 (F.B.).

Sec. 175.—The Punjab Municipal Act does not authorize what would otherwise be an unlawful infringement by the Municipal Committee of a person's right of access to his property. In putting the section into operation, the Committee must exercise its powers without injuring adjacent owners. The section is limited in its operation and the Committee before laying out and making a new public street, must acquire the necessary land or possess it already. It is not given a power to make a new street through the land of a private owner without his consent. 171 I.C. 509=A.I.R. 1937 Lah. 94. See also 1934 M.W.N. 561.

Secs. 176, 177 and 339.—Reading Ss. 177 and 339 of the District Municipalities Act together, it is clear that a person can be punished, if he has been given sanction under S.. 176, to construct a private road and if he has not complied with the conditions laid down by the Municipality when the sanction was accorded. S. 177 is not restricted to the present owner of a building. It is intended to apply against the person who has entered into the contract under S. 176, unless he shows that by rea-

(a) the intended level, direction and width of the street,

(b) the street alignment and the building line, and

(c) the arrangements to be made for levelling, paving, metalling, flagging, channelling, sewering, draining, conserving and lighting the street.

(2) The provisions of this Act and of any rules or by-laws made under this Act as to the level and width of public streets and the height of buildings abutting thereon shall apply also in the case of streets referred to in sub-section (1); and all the particulars referred to in that sub-section shall be subject to approval by the council.

(3) Within sixty days after the receipt of any application under sub-section (1) the council shall either sanction the making of the street on such conditions as it may think fit, or disallow it, or ask for further information with respect to it.

(4) Such sanction may be refused—

(i) if the proposed street would conflict with any arrangements which have been made, or which are in the opinion of the council likely to be made, for carrying out any general scheme for the laying out of streets,

(ii) if the proposed street does not conform to the provisions of the Act, rules and by-laws referred to in sub-section (2), or

(iii) if the proposed street is not designed so as to connect at one end with a street which is already open,

(5) No person shall make or lay out any new private street without or otherwise than in conformity with the orders of the council. If further information is asked for, no steps shall be taken to make or lay out the street until orders have been passed upon receipt of such information:

Provided that the passing of such order shall not in any case be delayed for more than sixty days after the council has received all the information which it considers necessary to enable it to deal finally with the said application. Any application not disallowed within a period of one hundred and twenty days from the date of receipt in the municipal office shall be deemed to have been sanctioned.

Alteration or demolition of street made in breach of section 176.

177. (1) If any person makes or lays out any street referred to in section 176 without or otherwise than in conformity with the orders of the council, the [1][executive authority] may, whether or not the offender be prosecuted under this Act, by notice—

(a) require the offender to show sufficient cause, by a written statement signed by him and sent to the [1][executive authority] on or before such day as may be specified in the notice, why such street should not be altered to the satisfaction of the [1][executive authority] or if such alteration be impracticable, why such street should not be demolished, or

(b) require the offender to appear before the [1][executive authority] either personally or by a duly authorized agent on such day and at such time and place as may be specified in the notice, and show cause as aforesaid.

LEG. REF.

1. These words were substituted for the word 'chairman' by section 17 (1) of the Madras District Municipalities (Amendment) Act 1933 (Mad. (XV of 1933)).

son of his parting with the ownership he is unable to comply with the order. 178 I.C. 266=A.I.R. 1938 Mad. 916=(1938) 2 M.L.J. 579.

(2) If any person on whom such notice is served fails to show sufficient cause to the satisfaction of the [1][executive authority] why such street should not be so altered or demolished, the [1][executive authority] may pass an order directing the alteration or demolition of such street.

Power of executive authority to order work to be carried out or to carry it out himself in default.

178. (1) If any private street or part thereof is not levelled, paved, metalled, flagged, channelled, drained, conserved or lighted to the satisfaction of the [1][executive authority] he may by notice require the owners or occupiers of buildings or lands fronting or abutting on such street or part thereof to carry out any work which in his opinion may be necessary and within such time as may be specified in such notice.

(2) If such work is not carried out within the time specified in the notice, the [1][executive authority] may, if he thinks fit, execute it and the expenses incurred shall be paid by the owners or occupiers in default according to the frontage of their respective buildings or lands and in such proportion as may be settled by the [1][executive authority].

Right of owners to require street to be declared public.

179. If any street has been levelled, paved, metalled, flagged, channelled, drained, conserved and lighted under the provisions of section 178, such street shall, on the requisition of not less than three-fourths of the owners thereof, be declared a public street.

Encroachment on streets.

Prohibition against obstructions in or over streets.

180. No one shall build any wall or erect any fence or other obstruction, or projection, or make any encroachment in or over any street except as hereinafter provided.

LEG. REF.

1. These words were substituted for the word 'chairman' by section 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Mad. (XV of 1933).

Sec. 178.—The persons who are liable under S. 178 of the Madras District Municipalities Act are the owners or occupiers of the houses or lands fronting or abutting private streets or lanes, and not the owners of the streets or lanes themselves. 1938 M.W.N. 865=A.I.R. 1938 Mad. 910=(1938) 2 M.L.J. 382.

Sec. 180.—Under the District Municipalities Act of 1884, the municipal council cannot insist upon any person who asks for sanction to put up a building on his own land, leaving a portion of it for the use of the public when it grants the sanction. The municipal council cannot enforce in law such a condition as it is ultra vires. Provided the building which the applicant proposes to construct does not offend against any of the rules framed by it for the purpose, the municipal council is bound to sanction it. If the municipal council does not sanction the construction within six weeks on receipt of the plan, the applicant can proceed to construct; but such construction must be in accordance with the plan which accompanied the application. 25 L.W. 329=98 I.C. 654=1927 M. 241. As to object of section, see 61 C. 326=38 C.W.N. 357=1934 C. 506. S. 168 (1) (of the old Act) applies to any projection made in front of a building in a public street. S. 168 (3) gives the right of compensation to the party aggrieved where the making of the projection did not contravene any provision of the law. The remedy of the aggrieved party where the projection has been unlawfully removed by the council is by a suit for compensation and not by a suit for injunction. 19 M.L.J. 757=4 I.C. 828. See also 38 C.W.N. 1099=1935 C. 116. A pandal erected in front of a building in a public street is a 'projection' within the meaning of the Act. 19 M.L.J. 757=4 I.C. 828 (F.) 5 I.C.

916). The plaintiff's remedy, in cases where the municipality directs the removal of such a projection, is to recover compensation, and a suit for an injunction will not lie. (Ibid.) Building a buttress wall projecting into a municipal street is an offence punishable under S. 180 of the Act, and a prosecution should be laid within three months of the encroachment. 20 L.W. 834 =1925 M. 186=47 M.L.J. 917. There can be no easement, which overrides the provisions of S. 168 (of the old Act). 5 I.C. 916 (19 M.L.J. 757, Foll). Twelve years' adverse possession before the Limitation Amendment Act of 1900 is sufficient to confer a title against the municipality. 38 M. 456=25 M.L.J. 297=20 I.C. 956. See also 38 M. 6=23 M.L.J. 479=17 I.C. 158. The question whether possession is adverse or not does not depend on the needs or requirements of the owner, but on the character of the occupation of the person in possession. Mere fugitive or unimportant acts of possession would not be sufficiently effective to make the possession adverse. 38 M. 6=23 M.L.J. 479=17 I.C. 158. Limitation for prosecution under the section is three months. See 1925 M. 186=47 M.L.J. 917.

Secs. 180 *to* 182.—The penal provisions of the Act as to encroachments must be restricted to newly built structures and has no applicability to cases in which an old projection has been demolished, and substituted by new one. 101 I.C. 747=1927 Lah. 276; 131 I.C. 221=1931 Lah. 79. Unless it is proved that the site on which the projection or obstruction stands is part of a street the Act will not justify the Municipal Committee in calling upon a person to remove a latrine. Where the petitioner was convicted under the Municipal Act and ordered to demolish a latrine which had stood for 65 years situated in a street close to the house, and it appeared that the latrine had been all along treated as private property, the conviction could not stand. 60 P.L.R. 1918=44 I.C. 46. See also 56 P.R. 1911 =9 I.C. 889. Where it is found that no encroachment was made recently the notice to remove projection is illegal and the question of the ownership of the land on which the said encroachment is alleged to have been made is immaterial. 131 I.C. 221=1931 L. 79 (1). The Municipal Committee is not competent to issue a notice in respect of the encroachments which were made about twenty years ago. (2 P.R. 1915 (Cr.), Foll.) 97 I.C. 288=27 P.L.R. 410. Grant of permission to build an old wall—Pulling down the wall and re-building it—Municipality cannot object. 1922 B. 344. Encroachment by previous owners—Present owner omitting to remove it is not liable. 18 N.L.R. 92=65 I.C. 559. Sanction to build granted under an older Act—Effect of the present Act on such sanction. See 9 P.R. 1905=14 P.L.R. 1905. The mere fact that sanction for the erection of a projection encroaching upon a street is applied for and included in an application for the construction of a building upon one's own site cannot extend the implied sanction by silence for six weeks. 62 P.R. 1907=105 P.L.R. 1908. The replacing of an old by a new superstructure upon an old chatta or bridge over a lane is a material alteration. The Committee acts *intra vires* if it requires the removal of such new superstructure erected without its permission. 178 P.L.R. 1912 =15 I.C. 658. The opening of a door in an existing wall does not materially alter a building and the Municipality cannot refuse permission to do it. 1930 A. 560=1930 A. L.J. 1017=123 I.C. 762. Municipality can make an order prohibiting doors to project into street. 9 S.L.R. 126=33 I.C. 675. Opening a window on the wall of a private house without sanction of the Municipality is no offence in the absence of an explicit rule prohibiting such action. 4 P. W.R. 1913 (N.W.F.P.) (Cr.)=169 P.L. R. 1913. See also 1942 M. 601=(1942) 2 M.L.J. 145=55 L.W. 466. Municipality can prescribe rules for projections on public streets and a by-law to that effect is not *ultra vires.* 42 Bom. 454=20 Bom.L.R. 388=45 I.C. 503. Order imposing a daily fine until removal of encroachment in the future is illegal. 24 Cr.L.J. 318=72 I.C. 78=1924 N. 66. There can be no fine for future breach—Fine must relate to period anterior to Magistrate's order. 20 Cr.L. J. 89=48 I.C. 889. Continuing breach of order—Imposition of prospective fine by Magistrate is not valid. 13 P.R. 1903 (Cr.)=171 P.L.R. 1903. See also 11 I.C. 139; 19 P.R. 1904. Proper course in such cases is to institute fresh proceedings for the continuing offence. 171 P.L.R. 1903 =13 P.R. 1903 (Cr.). Municipal Board is not authorised to encroach on private rights except for public benefit—Decision of Board in matters of such vital importance cannot be final when arrived at without hearing evidence—Board should not disallow erection of a building because it would look hideous—Parties should in such matters be left to seek their remedies in Civil Court. 1931 A. 147=1931 A.L.J. 206. Encroachment on public street—Order for removal, disobedience of, when offence. 11 P.R. 1904 (Cr.)=66 P.R. 1904. Where the plot was not in the possession of the Municipality for a long time, criminal proceedings are not proper without first establishing Committee's right of ownership. (Ibid.) Conviction for encroachment on municipal land must be based on substantial evidence. 31 P.W.R. 1908 (Cr.) The evidence of an official who has got no personal knowledge based on a comparison of some old municipal maps is only a mere opinion and not sufficient to base a conviction upon. 31 P.W.R. 1908 (Cr.). Conviction or acquittal for obstruction of street would be a bar for trial of the person for the same

offence and the same act. 63 P.L.R. 1904. Where the applicant has obtained a decree in his favour declaring that the site was his private property but the municipal authorities prosecuted him for building on that property, Held, the prosecution was wrong. 84 I.C. 718=26 Cr.L.J. 366=1925 Lah. 238.

Jurisdiction of Civil Court.—It is clear that a person is not entitled to build a balcony projecting on a street without the permission of the Committee. The Committee has full power to withhold permission for the building of a structure that will project over a street and a Civil Court has no jurisdiction to interfere in such a matter. 1922 Lah. 41. A written permission of the Committee is necessary to enable a person to build or erect any immovable encroachment upon the ground level of any street. But where the site on which the portion objected to by the Committee is constructed is not proved to be a street, a notice for demolition of the portion is invalid, and suit for injunction against the Committee is competent. 1930 Lah. 598. The powers conferred on a Municipal Committee to order the removal of a building or a portion of the building must be exercised strictly in accordance with law and procedure. If a Committee directs a person to remove a building on the ground that it has been recently built without permission, that person is not bound to remove the building, which it has been proved was not built recently, merely on the ground that it is on a public street, and would be quite justified in moving a Court to decide whether the notice actually served on him stated the facts correctly and gave sound reasons for the removal of the building concerned. This, of course, does not mean that the Courts will interfere with the discretion of the Committee lawfully exercised. 130 P.L.R. 1911. Notice served upon a person on behalf of the Municipal Committee to alter an encroachment (thara) on the drain, within a week, so as to bring it in conformity with the sanction failing which he would be dealt with according to law is a notice under S. 182. 116 I.C. 908=1929 Lah. 566. A sub-committee in a Municipality is entitled to compound under S. 229, Punjab Municipal Act, an offence with respect to an encroachment when authorised to do so by the Municipal Committee. Where a sub-committee by a resolution compounds a case of encroachment on payment of penalty and the order is not repudiated by the Municipal Commitee, but on the other hand, the payment of the penalty is accepted by its officer, the Committee as a whole, or the administrator standing in its shoes, is bound by the resolution of the sub-committee. A.I.R. 1939 Lah. 581. S. 265, U.P. Municipal Act, is obviously intended to apply to those cases where obstruction is in fact caused although no by-law has been framed to prevent the obstruction. It does not prevent the Board from preventing by a bye-law any act which would normally cause obstruction and inconvenience to the public although in a particular instance it must be that the act would not cause such obstruction or inconvenience. I.L.R. (1939) A. 770=181 I.C. 1=1939 A.L.J. 500=A.I.R. 1939 All. 466 (F.B.)

Notice by Municipality partly beyond its Powers—Disobedience to—Effect of.—Where the notice issued by the Municipality is in part within the powers conferred on the Municipality and in part beyond its powers it must be treated as bad in its entirety. To hold otherwise would impose upon the other party the obligation of picking out from the notice the requirement which it was within the power of the Municipality to call upon him to carry out. (1 Weir 749, Foll.) 34 P.L.R. 636=1933 L. 935. The Municipality gave permission to plaintiff to build a bridge across a drain in front of his house, on condition that he would, at the end of ten years either apply for fresh permission to maintain the bridge or permit its demolition. The ten years having elapsed the plaintiff not having applied for fresh permission the Municipality issued a notice calling uon the plaintiff to demolish his bridge or obtain fresh permission to maintain it. Held, that the notice issued by the Municipality was *ultra vires* and as the Municipality was exceeding its statutory powers it could be restrained by an injunction. 51 I.C. 831. Notice to remove platform—Prosecution—Fresh notice not necessary after accused's reply to Municipality. See 3 P.L.R. 1900=12 P.R. 1899 (Cr.).

Committee's Power to impose Conditions on Permission.—The Committee has no power to put restriction upon the permission granted by it. It has power to refuse permission but if it once grants the same, it cannot put any restrictions or limitations upon it. Where therefore the Committee grants permission to build a verandah in front of a person's house imposing conditions as regards payment of rent and removal of structure in future in case the Committee so required, such conditions are *ultra vires* in the absence of a bye-law framed under S. 188, conferring those powers on the Committee. (51 I.C. 831, Rel. on; 1922 Pat. 118. App.) 11 Lah. 276=1930 Lah. 246. The section does not intend to give the Municipal Committee anything more than absolute power of refusal or grant of an application made under the section. It cannot therefore grant such permission subject to any conditions such as payment of rent by the applicant. Imposition of a condition of payment of rent is therefore *ultra vires.* (1923 Lah. 417; 1922 Pat. 118; 45 P.R. 1905 and 27 P.R. 1901, Ref.) 1929 Lah. 701. (See however S. 183 (2).) Where a Municipal Committee has not framed any by-law regulating their

[1][180-A. All streets vested in or to be vested in or maintained by a municipal council shall be open to persons of whatever caste or creed.]

Public streets open to all.

Prohibition and regulation of doors, ground-floor windows and bars opening outwards.

181. (1) No door, gate, bar or ground-floor window, shall without a licence from the [2][executive authority] be hung or placed so as to open outwards upon any street.

LEG. REF.

1. This section was inserted by section 2 of the Madras District Municipalities (Amendment) Act, 1929 (Madras Act XVII of 1929).

2. These words were substituted for the word 'chairman' by section 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

power to impose conditions as to payment of rent, etc., on sanctioning an encroachment under S. 172, it is not open to the Committee to grant permission to make an immovable encroachment on a public street subject to the condition of payment of ground rent. (11 Lah. 276. Rel. on) 133 I.C. 124=32 P.L.R. 211. Municipal Committee cannot restrict the permission granted by it so as to safeguard its private rights on a particular piece of land. 45 P.R. 1905=50 P.L.R. 1905. The Municipal Committee, while granting sanction to erect a building, cannot make the sanction conditional on the applicant doing something quite foreign to the object of his application, and to the purpose and object for which the power of sanction is given by the Legislature. 27 P.R. 1901. Sanction to build with restrictions must be adhered to unless *ultra vires.* 3 Pat.L.T. 226=1 Pat. 216=63 I.C. 355=1922 P. 118. Where a person applied to the Municipal Committee for sanction to build so as to encroach upon a street and the Municipality having sanctioned the same on condition of his paying certain rent he agreed to the same. Held, that the contract was not illegal and that the Municipality was entitled to recover the rent reserved. 32 P.L.R. 607=132 I.C. 696=1931 Lah. 634. S. 198, Bihar and Orissa Municipal Act empowers the Municipal Commissioners to carry out the orders obtained by them from the Magistrate and provides that they shall be bound to execute such orders.. The Municipality cannot be held liable for carrying out such orders for removal of steps and platforms in front of a person's house, merely because the Magistrate does not give notice to and hear the party concerned before passing such orders; nor can the orders be regarded as *ultra vires.* 156 I.C. 468=1935 Pat. 105 (2). The power given to the Municipality under Ss. 196 and 197 of the Bihar and Orissa Municipal Act, to remove the platforms and steps constituting encroachments, is not confined to such structures as are erected or placed subsequent to the formation of the Municipality or subsequent to the passing of the Act. The Act contemplates the existence of such projections even before the existence of the Municipalities. Even under the Bengal Act (III of 1884), which was in force before the Bihar Act (VII of 1923) came into force, the Municipalities had power to deal with ancient projections. That power has not been taken away by the new Act, which has, however, enlarged the rights of the rate payers by requiring municipalities to pay compensation for projections which has existed for more than thirty years. 156 I.C. 468=1935 Pat. 105 (2).

Revocation of Sanction.—The sanction once given by a Municipal Committee to raise a building cannot be revoked. 52 P. R. 1900=385 P.L.R. 1900. Where a projection does not overhang a street but overhangs a private piece of property, the Municipal Board has no jurisdiction to pass an order; if it passes it can be questioned in Civil Court. 1925 A. 234=85 I.C. 761. Section is inapplicable to structures or encroachments built from 8 to 15 years prior to the date of the notice. The section applicable to encroachments or structures which are not recent or were made with permission is S. 182, Cl. (2) under which the Committee must award reasonable compensation. (6 I.C. 431 (435); 23 B. 248; 25 C. 161 (166), Ref.) 16 Cr.L.J. 350=2 P.L.R. (Cr.) 1915=28 I.C. 734. Held, that where for six weeks no orders, were passed on the application of the accused to build *"chanbaar"* and *"chajja"* he was rightly acquitted of the offence of building a *"chajja"* without the previous sanction of the Municipal Commitee. 13 P.L.R. 1901.

Illustrative Cases.—Where a takhtposh is placed on the drain in front of a person's shop, the superstructure on that takhtposh is a movable encroachment over the drain and is, therefore an encroachment which the Municipal Committee is entitled to have summarily removed. 93 I.C. 627=1926 Lah. 327. Order to leave open space between house and street drain is not illegal. 3 P.L.W. 252=37 I.C. 854. It is not lawful for the owner of a building to add to or place against or in front of his building any projection or encroachment without the written permission of the Committee. 27 P.R. 1904 (Cr.) See also 62 P.R. 1907 (Cr.). If the Municipality has leased out the right to stock goods on a specified portion of a street to one person, it cannot prosecute another person under S. 173, for

(2) The [1][executive authority] may by notice require the owner of such door, gate, bar or window to alter it so that no part thereof when open shall project over the street.

Removal of encroachments.

182. (1) The [1][executive authority] may by notice require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction (other than a door, gate, bar or ground-floor window) situated against or in front of such premises and in or over any street.

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933.)

---

depositing goods thereon without the permission of the lessee. 22 P.R. (Cr.) 1919=20 Cr. L.J. 516=51 I.C. 676. Where a person put up stones to demarcate true limits of his private street where it abutted on a public street it is an obstruction and the Corporation can demand its removal. 34 I.C. 735=1916 M.W.N. 394. Erection of scaffolding—Actual obstruction need not be proved. 21 Cr.L.J. 864=58 I.C. 944. If a man puts a bench on the pavement in front of his shop in a Municipal street without the permission of the Municipality, obstruction of the public road must be presumed. 109 I.C. 809=1928 A. 60. The public are entitled to use the whole breadth of a street to the last inch of it. So placing *moras* in front of a shop would constitute obstruction of a public street. 45 P.R. 1905 (Cr.) =189 P.L.R. 1905=3 Cr.L.J. 130.

Secs. 180, 181 *and* 182.—As to the power of a municipality to tax or levy fees in respect of boardings and advertisements on public street. See (1957) 2 Andh. W.R. 389 =1957 Andh. Prad. 1053, cited under S. 3 (21) supra.

Sec. 181 (2) : *Applicability—"Encroachment"—Meaning—Panels of window passing six inches beyond road boundary when being opened.*—An encroachment generally means something that hangs more or less permanently over the road and not something which momentarily passes over some portion of the road. What S. 181 of the Madras District Municipalities Act prohibits is the erecting without licence of a window, door, gate, or bar that, when in its normal open position, projects over the street. If the position of a window when open is parallel or almost parallel to the wall, it is not hit by S. 181 which deals with windows, etc., which in their normal open position project over the road. The petitioner constructed a window, the panels of which, when swung open, passed six inches beyond the road boundary; it was, however, found that when the window was fastened back, it did not project over the road; nor did it when it was shut. The petitioner was called upon by the executive authority of the Municipality under S. 181 (2) to alter the window, but as he did not do so, he was prosecuted and convicted. Held, that the petitioner had not committed any encroachment falling within the mischief of S. 181 of the Act and he was therefore not liable to conviction under S. 181. 202 I.C. 610=1942 M.W.N. 481 (1) =43 Cr.L.J. 866=55 L.W. 466=A.I.R. 1942 Mad. 601=(1942) 2 M.L.J. 145.

Secs. 181 *and* 182.—See also notes under S. 180. S. 169 of the Madras Act IV of 1884 does not empower a district municipality to prevent a person dealing with his own property, provided he does not interfere with the convenience of the public or with any sanitary regulation. The Secretary of State is not a necessary party to a suit against a municipality for a declaration of title to certain property situated within the limits of such municipality. 15 M. 292. Power to remove encroachments is confined to streets vested in the municipality. 38 Mad. 456=25 M.L.J. 297=20 I.C. 956. The plaintiff was in enjoyment of certain plots for several years and gave notice to the municipality while building on those plots to which the latter did not object. Held, the municipality must prove the encroachment. It is not sufficient only to prove that the plaintiff's house and verandah are a foot in front of the neighbouring houses in the absence of a line of frontage to which all houses must conform. (1910) 1 M.W.N. 430=7 I.C. 808.

Sec. 182.—Object of section is not empowering municipality to compulsorily acquire private property but only to cause in the public interest, obstructions and encroachments to be removed. If any person has acquired a prescriptive title to an encroachment still he must observe any order for its removal though he can claim compensation. 1925 Mad. 64=47 M.L.J. 470. S. 182 applies to all streets, private as well as public. Where there is a *bona fide* dispute as to the ownership of a private lane and the part of the lane alleged to have been encroached upon by the accused is situated near the house of the accused and the lower Court has acquitted the accused after having come to a finding on the evidence which cannot be said to be altogether unreasonable, the High Court will be reluctant to interfere with the acquittal in appeal and to convict the accused. 1942 M.W.N. 370=55 L.W. 366=

(2) If the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or made with the permission or licence of any municipal authority duly empowered in that behalf, and that the period, if any, for which the permission or licence is valid has not expired, the municipal council shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same.

---

43 Cr.L.J. 665=A.I.R. 1942 Mad. 531=(1942) 1 M.L.J. 586. Even if a projection is found above or over the area constituting the street, the Municipality is entitled under S. 182 to have it removed. Even if the owner of the premises has obtained a prescriptive right to have the projections, it would be open to the Municipality to direct their removal; but in such a case the Municipality should make a reasonable compensation to every person who suffers damage by removal or alteration of the same. The fact that the Municipality is bound to make compensation will not entitle the owner to obtain a declaration or injunction that the Municipality is not entitled to remove the projections. 211 I.C. 390=1943 M.W.N. 321=56 L.W. 318=A.I.R. 1943 Mad. 553=(1943) 1 M.L.J. 406. The plea that if a chairman serves a notice under S. 182 and refrains from taking action under S. 313 for 3 months no further notice can be served on the encroacher although the encroachment continues is not sustainable in law, but in practice it would seem advisable once the municipality has decided to take action that it should press the matter to a final conclusion. 1927 M.W.N. 342. It is necessary to prove that any construction is an encroachment and when the owner proves any right, under the Limitation Act, as having continued as an encroachment for over the statutory period he is entitled to compensation. 1925 Mad. 64 =45 Mad. 716=47 M.L.J. 470. There is no distinction between title perfected before the Act came into force and that derived after the Act. 51 Mad. 318=1928 Mad. 477=54 M.L.J. 581.

Sec. 182 (1).—There is nothing in the use of the word "or" in S. 182 (1) of the Madras District Municipalities Act which restricts the municipality to choose one out of the two persons, *viz.*, occupier and owner of the premises; both these persons may be proceeded against by the municipality under this section. 1930 M. 510 (1) =58 M.L.J. 622. Projections and structures existing before the Act—Power of Municipality to remove. See 16 Pat.L.T. 49=1935 P. 105.

Secs. 182 *and* 364.—S. 364 does not in anyway control or affect the provisions of S. 182, the terms of which are absolutely wide under S. 182, the executive officer is entitled to remove the encroachment by reason of the permission accorded by the collector under the Act of 1884. Where a party had spread drain coverings with the permission of the municipality long prior to the new Act of 1920, he would be entitled to reasonable compensation if called upon to remove the coverings or slabs. But he cannot obtain an injunction restraining the municipality from removing the encroachment under S. 182 (1), if deemed necessary. (1955) An.W.R. 318 (54 M.L.J. 581, relied on).

Sec. 182, *Cl.* (2): *Tender of Compensation.*—The Committee must make a tender of reasonable compensation to the person to whom the notice to demolish his building on the ground of encroachment is given before he can be called upon to demolish the structure. It is immaterial whether the question is raised in criminal or civil suit. (1924 Lah. 89. Rel. on; 24 P.R. 1890, Dist.) 121 I.C. 424=1929 Lah. 763. The requisition open to the Municipality is subject to the payment of compensation, *i.e.*, the tender of compensation must accompany the notice. 4 Lah. 158=1924 Lah. 89.

Interference by Civil Court—When Justifiable.—Where the action of the Committee is shown to be *intra vires* and it is in no way dishonest or malicious, the question of whether it was necessary in the public interest to take action to remove the structures does not arise in Civil Court. 79 I.C. 8=1924 Lah. 699. Where a Municipal Committee acting *intra vires* and without malice or dishonestly orders the removal of a structure as being an encroachment in a street, a Civil Court cannot question the same. 79 I.C. 8=1924 Lah. 699. The Municipal Committee first sanctioned the erection by plaintiff of a verandah on a *chabutra* in front of his house and afterwards required him to pull it down. The site of *chabutra* belonged to Municipality. The plaintiff then sued for an injunction against the Committee. Held, that persons dissatisfied with the action of a Committee cannot appeal to a Civil Court, which can therefore only act when the act is in excess of the powers of the Committee and cannot dcide whether the Act is reasonable or not. Held, also, that as site under the *chabutra* was not the property of the plaintiff and was therefore part of the municipal property the verandah built on it was overhanging the street and the Committee could rightly require it to be demolished on payment of reasonable compensation under S. 175. 104 P.R. 1916=81 P.L.R. 1917=36 I.C. 599. The remedy of an aggrieved

Power to allow certain projections and erections.

183. (1) The council may grant a licence, subject to such conditions and restrictions as it may think fit, to the owner or occupier of any premises to put up verandahs, balconies, sun-shades, whether-frames and the like, to project over a street, or in streets in which the constructions of arcades has been sanctioned by the council, to put up an arcade; or to construct any step or drain-covering the necessary for access to the premises.

[1][(2) The [2][executive authority] may grant a licence, subject to such conditions and restrictions as he may think fit, for the temporary erection of pandals and other structures in a public street vested in the council or in any other public place the control of which is vested in the council.]

[1][(3) The council shall have power to lease road-sides and street margins vested in it for occupation on such terms and conditions and for such period as the council may fix.]

[1][(4) But neither a licence under sub-section (1) nor a lease under sub-section (3) shall be granted if the projection, construction or occupation is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road as such.]

[1](5) The[3]([State] Government) may, by notification, restrict and place under such control as they may think fit, the exercise by municipal councils in general or by any municipal council in particular, of the powers under sub-sections (1) and (3).]

[1][(6) On the expiry of any period for which a licence has been granted under this section, the [2][executive authority] may, without notice, cause any projection or construction put up under sub-section (1) or (2) to be removed, and the cost of so doing shall be recoverable in the manner provided in section 344 from the person to whom the licence was granted.]

LEG.. REF.

1. Sub-Ss. (2) to (6) were substituted for the original sub-Ss. (2) and (3) by S. 100 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

3. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word "Provincial" the word "State", was substituted by A.L.O., 1950.

---

party for the unlawful removal of a projection by a Municipal Committee without making any tender of compensation is a suit for compensation and not a suit for injunction. 159 I.C. 639=1936 Lah. 182. S. 172 of the Punjab Municipal Act gives a statutory right to Municipal Committees in the Punjab to remove any encroachment erected without permission, and there is no limitation in point of time, except that compensation must be paid if the structure is more than three years old. The exercise of a Committee's right under this section is not the same as the institution of a suit for possession and the operation of Art. 146-A of the Limitation Act is limited to such suits. The Municipal Committee does not, therefore, lose its statutory right of removing encroachments from the site of the streets through the acquisition of prescriptive right to resist a suit of the class mentioned under Art. 146-A. 159 I.C. 639=1936 Lah. 182. A poster affixed to a wall cannot be regarded as a movable encroachment. 159 I.C. 1775=1936 Lah. 177. Where there has been payment of rent to the Committee without any written permission by the Committee, the penal provisions of the Act cannot be invoked. The payment of rent shows only relationship of landlord and tenant and a dispute regarding arrears of rent must be etermined and adjudicated by a Civil Court. 152 I.C. 919=36 P.L.R. 298=1934 Lah. 699.

Secs. 183 *and* 313 (*c*)—*Applicability and Scope of.*—Encroachment by houseowner in front of house—Failure to pay licence fees and to get renewal of licence—Offence—Prosecution for not taking out licence—Sustainability. Where a house owner who had been taking out a licence under S. 183 (1) for certain encroachments (putting up of certain taps and also some steps) in front of his house did not pay the necessary fee and obtain the licence in respect of a particular year, and a notice is issued to him by the municipality calling upon him to renew his licence by paying the licence fee plus

Precautions during repair of streets.

184. (1) The [1][executive authority] shall during the construction or repair of any street, drain or premises vested in the municipal council

(a) cause the same to be fenced and guarded,

(b) take proper precautions against accident by shoring up and protecting the adjoining buildings, and

(c) cause such bars, chains or posts to be fixed accross or in any street in which any such work is under execution as are necessary in order to prevent the passage of vehicles or animals and avert danger.

(2) The [1][executive authority] shall cause such drain, street or premises to be sufficiently lighted or guarded during the night while under construction or repair.

(3) The [1][executive authority] shall, with all reasonable speed, complete the said work, fill in the ground, and repair the said drain, street, or premises and remove the rubbish occasioned thereby.

Prohibition against removal of bars and lights.

185. No person shall without lawful authority remove any bar, chain post or shoring timber or remove or extinguish any light set up under section 184.

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

---

penalty in advance and stating that in default he will be prosecuted under S. 313 for the offence of encroachment, he can only be prosecuted for non-removal of the encroachment if, after notice, he fails to remove it. But he should not be prosecuted for not taking out licence when he fails to pay the fees and to get the licence renewed. (1956) 2 M.L.J. 188.

Sec. 183.—There is nothing in the Bihar and Orissa Municipal Act requiring any other authority than a resolution of the Commissioners at a meeting to impose the obligation on the owners of platforms to take out licences. The Commissioners have power by their own resolution to make it obligatory on the owner of platforms to take out licences. 160 I.C. 1076=17 Pat. L.T. 148=1936 Pat. 101. Applicability of section—Pial of house. See (1941) 1 M.L.J. 624=1941 M. 657=58 L.W. 712. S. 173 of the Punjab Municipal Act applies only to cases of recent encroachments made without sanction of the Municipal Committee. Where an encroachment was made some years ago and with the permission of the Municipal Committee, it cannot be said with any justification that, because either the sanction has expired, or rather the tenancy or licence has expired, or because having made the encroachment a person has failed to comply with the conditions which had to be performed on his part, he placed the encroachment without the sanction of the Committee. 35 P.L.R. 601=1934 Lah. 733 (2). The Municipal Committee cannot use a public street otherwise than as a public street and it has no right to interfere with the enjoyment of the right of way by the public by letting out a portion of it to a particular individual for a private purpose. 1934 Lah. 900.

Sec. 183 (3)—*Scope—Exercise of powers under—If bar to action under other Clauses*—If a Municipal Council has already exercised its powers under S. 183 (3) in respect of the portion of the land and forming part of the road and has imposed conditions for the occupation of the portion by the lessee of such portion, it cannot again exercise further powers under the other subclauses in respect of the same land. 67 L.W. 799=(1954) 2 M.L.J. 606. Enhancement of licence fee in respect of encroachment——Notification of Commissioner—Validity. See 1957 Orissa 285.

Sec. 184 (b).—The words "or to take such order with the same for removing or abating the nuisance as the Chief Officer shall prescribe" must be considered with their context. It is a case of *noscitur a sociis.* The words in question cannot be construed as empowering the Chief Officer of a Municipality to make an order requiring the owner of low lying land comprising several acres to fill it up with dry earth to the level of the surrounding ground, to a height of two to three feet. 168 I.C. 199 =38 Cr.L.J. 538=39 Bom.L.R. 77= A.I.R. 1937 Bom. 165.

Prohibition against making holes and causing obstruction.

186. (1) No person shall make a hole or cause any obstruction in any street, unless he previously obtains the permission of the [1][executive authority] and complies with such conditions as that officer may impose.

(2) When such permission is granted, such person shall, at his own expense, cause such hole or obstruction to be sufficiently fenced and enclosed until the hole or obstruction is filled up or removed and shall cause such hole or obstruction to be sufficiently lighted during the night.

Licence for work on buildings likely to cause obstruction.

187. If any person intends to construct or demolish any building or to alter or repair the outward part thereof, and if any street or footway is likely to be obstructed or rendered inconvenient by means of such work, he shall first obtain a licence from the [1][executive authority] in that behalf and shall also—

(*a*) cause the said building to be fenced and guarded,

(*b*) sufficiently light it during the night, and

(*c*) take proper precautions against accidents during such time as the public safety or convenience requires.

Clearing of debris of fallen houses, etc., by occupiers.

188. If any obstruction is caused in any street by the fall of trees, structures or fences, the owner or occupier of the premises concerned shall within twelve hours of the occurrence of such fall, or within such further period as the [1][executive authority] may by notice, allow, clear the street of such obstruction.

Naming of streets.

Naming of public streets.

189. (1) The council shall give names to new public streets and may alter the name of any public street.

(2) The [1][executive authority] shall cause to be put up or painted in English and in at least one vernacular language on a conspicuous part of some building, wall or place, at or near each end, corner or entrance the name of every public street.

(3) No person shall without lawful authority destroy, pull down, or deface any such name or put up any name different from that put up by order of the [1][executive authority].

Numbers on buildings.

Numbering of buildings.

190. (1) The [1][executive authority] may cause a number to be affixed to the side or outer door of any building or to some place at the entrance of the premises.

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

Sec. 186.—Where the Municipal Committee sanctioned projections of certain dimensions, in front of the plaintiff's shops opening on the street, and the Deputy Commissioner afterwards advised the Committee to issue order for their complete demolition and the Committee order accordingly. Held, that the projections were desirable in front of plaintiff's shops and the street being wide, injury by their removal would be much more to plaintiff than to the Committee and the Committee, having once sanctioned projections, was not entitled to order their demolition even though the action of the Deputy Commissioner might be tantamount to revocation of the sanction of the Committee. (A.I.R. 1936 Lah. 689, Rel. on.) 171 I.C. 616=A.I.R. 1937 Lah. 84.

(2) No person shall without lawful authority destroy, pull down or deface any such number.

(3) When a number has been affixed under sub-section (1), the owner of the building shall be bound to maintain such number and to replace it if removed or defaced; and if he fails to do so, the [1][executive authority] may by notice require him to replace it.

CHAPTER X.

BUILDING REGULATIONS.

General powers.

Building rules.

191. (1) The [2][State Government] may make rules—

(a) for the regulation or restriction of the use of sites for building, and

(b) for the regulation or restriction of building.

(2) Without prejudice to the generality of the power conferred by sub-section (1), clause (a), rules made under that clause may provide—

(a) that no insanitary or dangerous site shall be used for building, and

(b) that no site shall be used for the construction of a building intended for public worship, if the construction of the building thereon will wound the religious feelings of any class of persons.

(3) Without prejudice to the generality of the power conferred by sub-section (1), clause (b), rules made under that clause may provide for the following matters:—

(a) information and plans to be submitted together with applications for permission to build;

(b) height of buildings, whether absolute or relative to the width of streets;

(c) level and width of foundation, level of lowest floor, and stability of structure;

(d) number and height of storeys composing a building and height of rooms;

(e) provision of sufficient open space external or internal and adequate means of ventilation;

(f) provision of means of egress in case of fire;

(g) provision of secondary means of access for the removal of filth;

LEG. REF.

1. See Foot-note 1, page 145.

2. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and for the words "Provincial" the word "State" was substituted by A.L.O., 1950.

Sec. 191.—Where a public street running through a privately owned plot of land vests in and belongs to the Municipal Board, it is competent for the Municipal Board to grant permission to the owners or occupiers of shops and houses abutting on the street, to erect porticos and shelter at a reasonable height from the ground for the comfort and convenience of the public visiting the shops and houses. 56 A. 784=149 I.C. 190=1934 A.L.J. 418=1934 All. 338. The U.P. Municipalities Act does not intend that structures affecting the surface and the space immediately above the surface are to be erected only by permission of the proprietor of the solum of the street as well as by leave of the Municipal Board. 64 I.A. 354=I.L.R. (1937) A. 901=1937 P.C. 299=(1938) 1 M.L.J. 788 (P.C.). Application to build latrine at a particular place—Permission—Power of Municipality. 59 M.L.J. 479=1931 M. 228.

(h) materials and methods of construction of external and party walls, roofs and floors;

(i) position, materials and methods of construction of hearths, smoke, escapes, chimneys, staircases, latrines, drains, cess-pools;

(j) paving of yards;

(k) restrictions on the use of inflammable materials in building; and

(l) in the case of wells, the dimensions of the well, the manner of enclosing it, and if the well is intended for drinking purposes, the means which shall be used to prevent pollution of the water.

Building site and construction or reconstruction of buildings.

192. No piece of land shall be used as a site for the construction of a building and no building shall be constructed or reconstructed otherwise than in accordance with the provisions of this Part and of any rules or by-laws made under this Act relating to the use of building sites or the construction or reconstruction of buildings;

Provided that the [1][State Government] may in respect of all municipalities or with the consent of the municipal council, in respect of any particular municipality or portion thereof, exempt all buildings or any class of buildings from all or any of the provisions of this chapter or the said rules.

Power of council to regulate future construction of certain classes of buildings in particular streets of localities.

193. (1) The council may give public notice of its intention to declare—

LEG. REF.

1. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937 and for the word "Provincial" the word "State" was substituted by A.L.O., 1950.

Sec. 192: *"Building"*.—The term "building" as used Ss. 189, 190 and 193 means that part of the house in respect of which an application is made to the Committee and it does not mean the whole of the house, a portion whereof is proposed to be erected or re-erected and, therefore, the conditions imposed by the committee must be confined to that part of the house in respect of which an application to erect or re-erect is made to it. It also follows that the Committee is not entitled to invoke the aid of a bye-law which prohibits erection of any portion of any building abutting on a street or land within four feet of the centre of such street or land, for putting back an old outer wall of the applicant's houuse which abutted a street, if the building proposed to be erected does not abut a street. 110 I.C. 285=1928 Lah. 393. The Municipal Committee can impose conditions in order to regulate line of frontage only by framing a byelaw under S. 190. Apart from any such by-law the Committee has no power to prohibit construction of building within four feet of the centre of a passage which is not a street. 122 I.C. 564=1930 Lah. 547. Order of Municipal Board regarding building—Finality—Right of third party to establish right by suit—If barred. See 7 O.W.N. 396=1930 O. 204. Common courtyard—Opening of doorway by one coowner—No offence under the Municipalities Act, 1937 A.L.J. 136=1937 All. 361.

Construction or re-construction of building.—Meaning of. See 142 I.C. 869=34 Cr.L.J. 452=1933 Lah. 85; effecting crude repairs to existing walls is not erection or re-erection and no sanction is required. (Ibid). See also 180 I.C. 907=68 C.L.J. 476=A.I.R. 1939 Cal. 285. But erection of partition wall requires sanction. 13 P.R. 1907 (Cr.)=6 Cr.L.J. 42. So also construction of platform. 37 I.C. 854. Pulling down and putting up again a balcony is not erection. 1917 Pat. 338=41 I.C. 713.

Alteration of Building.—Plaintiff asked for permission to build a saiban the plan showing slight gaps between the support of the roof. The plaintiff subsequently made additions by filling these gaps with doors and windows. The Municipality gave notice to demolish the additions. In a suit for an injunction restraining the Municipality from demolishing the additions. Held, that the notice was not illegal as the opening of doors and windows constituted a material alteration of the building. 28 I.C. 341=58 P.L.R. 1915.

Sec. 193.—Construction of section. See 52 M.L.J. 653. Grant of permission to erect building does not become effective until

(a) that in any streets or portions of streets specified in the notice,

(i) continuous building will be allowed,

(ii) the elevation and construction of the frontage of all buildings thereafter constructed or reconstructed shall, in respect of their architectural features, be such as the council may consider suitable to the locality, or

(b) that in any localities specified in the notice, the construction of only letached buildings will be allowed, or

(c) that in any streets, portions of streets or localities specified in the notice, the construction of shops, warehouses, factories, huts, or buildings of a specified architectural character or buildings destined for particular uses will not be allowed, without the special permission of the council.

(2) No objections to any such declaration shall be received after a period of three months from the publication of such notice.

(3) The council shall consider all objections received within the said period and may then confirm the declaration, and before doing so, may modify it but not so as to extend its effect.

(4) The [1][executive authority] shall publish any declaration so confirmed and it shall take effect from the date of publication.

(5) No person shall, after the date of publication of such declaration, construct or reconstruct any building in contravention of any such declaration.

Buildings at corner of streets.

194. (1) The council may require any building intended to be erected at the corner of two streets to be rounded of or splayed off to such height and to such extent otherwise as it may determine, and may acquire such portion of the site at the corner as it may consider necessary for public convenience or amenity.

(2) For any land so acquired the municipal council shall pay compensation.

(3) In determining such compensation allowance shall be made for any benefit accruing to the same premises from the improvement of the streets.

Prohibition against use of inflammable materials for buildings without permission.

195. No external roof, verandah, pandal or wall of a building shall be constructed or reconstructed of grass, leaves, mats, or other inflammable materials except with the permission of the [1][executive authority].

Prohibition against constructing doors, ground-floor windows and bars so as to open outwards.

196. No door, gate, bar, or ground-floor window which opens on any public street shall be constructed or reconstructed so as to open outwards except with the [2][licence of the executive authority] under section 181.

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. These words were substituted for the words 'chairman's licence' by S. 17 (2) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

---

there is a properly signed permission. A resolution of the Building Committee to grant permission can be revoked before issue of written permission. 70 C.L.J. 311 =1940 C. 11.

Sec. 195.—In construing S. 195 the Court ought not to travel outside the clear wording of the section so as to introduce into it the word "continuance". 51 Mad. 870=1928 Mad. 846=54 M.L.J. 642. It is unlawful to construct or allow to exist an inflammable pandal, without the written permission of the President. 19 Cr.L.J. 948=47 I.C. 672=8 L.W. 581.

[1][*Buildings other than huts.*]

Application to construct or reconstruct building.

197. (1) If any person intends to construct or reconstruct a building other than a hut he shall send to the [2][executive authority]—

LEG. REF.

1. Under S. 5-A (1) of the Madras Cinemas Regulation Act (IX of 1955), the provisions of Madras Act V of 1920 shall not apply to any application under the said section by any person who intends to use any site for constructing a building thereon for the exhibition of cinematograph films, or to construct or reconstruct any buildings for such exhibition, or instal any machinery in any place where cinematograph exhibitions are proposed to be given.

2. See footnote 1, page 148.

Sec. 197.—Licence necessary before commencing to erect building. 1 M.L.J. 37. Erection of building without sanction, when offence. See 19 N.L.J. 81=I.L.R. (1936) N. 56=1937 N. 79. Where a person removes a partition wall in the building and thereby increases the area of the rooms, it does not necessarily result in the increase of the cubical capacity of the building as distinguished from the rooms within the building and unless it is shown that the cubical capacity of the building is affected, it cannot be said that there has been a material alteration within the meaning of the Act. Hence permission of the commissioners is not required. 41 C.W.N. 1316= A.I.R. 1937 Cal. 556.

Sec. 197 (1)—*"Construction"—Meaning of—"Alteration"—S.* 215 (1)—*Putting up of partition walls in room—Effect of—Jurisdiction of Civil Court—Bar of—S.* 322—*Scope.*—The provisions of S. 322 of the District Municipalities Act cannot operate as a bar to the jurisdiction of civil Court to entertain a suit based on allegations that the Municipality acted in excess of its powers under the statute. (1940) 2 M.L.J. 140 and (1934) 69 M.L.J. 695, referred to. The expression 'construction' in S. 197 (1) of the said Act does not refer to ancillary constructions which, more properly, come under additions or alterations. An alteration of a single room into four rooms by putting up partition walls amounts to an alteration of the main building within the meaning of S. 215 (1) of the said Act. (1954) 2 M. L.J. 556, referred to. (1959) 2 An.W.R. 69.

Secs. 197-199: *Scope and Applicability.* —1944 M. 476=(1944) 2 M. L. J. 44. The sections refer only to buildings to be erected on private property. (62 P.R. 1907, Ref.) 1922 Lah. 41. Nothing in the Act authorises the Municipality to refuse permission to rebuild a house on the ground that they propose to acquire it, or to refuse permission *in toto*. All that the Municipality can do is to ask for certain information and impose conditions and their utmost power is to direct that the work shall not be proceeded with until certain questions have been decided to their satisfaction. 56 Bom. 135=34 Bom.L.R. 143=1932 Bom. 259. Section empowers the Committee to refuse sanction to build or to grant sanction either absolutely or subject to such modifications as it may deem fit. 73 I.C. 725=1923 Lah. 417. *See also* 133 I.C. 540=1932 L. 59. Where the chairman of the Municipal Board in granting a sanction to the applicant for re-erecting a wall of his house which was close to a lane, laid down a condition that the wall should be constructed leaving certain space from the lane, but the applicant constructed the wall without leaving such space. *Held*, that there was no sanction given to the applicant to build the wall at the place where it had been actually constructed and he was liable to be convicted under Municipalities Act. 159 I.C. 513= 1935 A.L.J. 1101=1935 All. 986. It is incumbent on a person who has given notice not to commence any work of which notice has been given until sanction has been given or deemed to have been given by the Board. 159 I.C. 513=1935 A.L.J. 1101=1935 All. 986.

Tacit Sanction.—A tacit sanction provided for by S. 202 covers erection or re-erection of buildings entirely within the bounds of a person's own land, but does not cover a projection or structure overhanging or encroaching upon any street or road. (62 P.R. 1907, Foll.) 92 I.C. 765. *See also* 1935 Oudh 197.

Restrictions on sanction—Validity.—Where sanction was granted subject to the condition that a particular wall in the plan of the proposed new building should be put back a certain distance, *held*, the Committee was not acting beyond its powers in imposing the condition in question. 71 I.C. 775 =1924 Lah. 393.

Revocation of sanction.—Where once the Municipal Committee has given sanction to roof a drain, it cannot revoke it. (52 P.R. 1900 and 42 Bom. 629, Foll.) 100 I. C. 813=1927 Lah. 891. If no reply is given to a notice given to a Municipality for erecting, re-erecting or repairing a house within one month from the date of service, such silence amounts to an irrevocable sanction of the Municipality. 122 P.L.R. 1913=19 I.C. 781. Under R. 65 of Sch. XVII the power of the corporation to cancel a permission on the ground of material misrepresentation by the applicant is absolute only in

(a) an application in writing for the approval of the site, together with a site plan of the land, and

(b) an application in writing for permission to execute the work together with a ground-plan, elevations and sections of the building, and a specification of the work.

[1][*Explanation.*—'Building' in this sub-section shall include a wall or fence of whatever height bounding or abutting on any public street].

LEG. REF.

1. This Explanation was added by section 101 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

---

the sense that no other authority can revise the order of revocation. But the Court which has to make the order of demolition has a discretion in the matter. For a proper exercise of discretion it is absolutely necessary for the Court to go into the question as to what were the exact circumstances under which the revocation was made or the extent to which the misrepresentation or fraudulent statement if any, could have affected the granting of the permission. Where the construction was completed within a short time of the sanction sometime about the end of 1927 and though the sanction was revoked in February, 1928, the revocation was not confirmed till August, 1930, and it was further found by the Court that the deviations from the rules were all condoned by the District Building Committee on the petitioner fulfilling certain requirements and the misrepresentations which the petitioner was alleged to have made had little bearing on the question of safety of the building or its sanitation an order for the demolition of the building cannot be made. 61 C. 356=38 C.W.N. 280 =1934 C. 389. Though the section does not speak of notice, it is such an elementary and fundamental principle of natural justice that when a party has acquired a valuable right in the shape of a permission to build, that permission could not be withdrawn behind his back on the ground of alleged fraud or misrepresentation by the party without a notice to him and an opportunity to be heard in his defence. 61 C. 356=38 C.W.N. 280=1934 C. 389. Where a Municipal Committee granted permission in writing to the plaintiff for a structure erected by him and also accepted a penalty from him, it cannot proceed against him and require demolition of the structure even though it finds that its permission was granted in contravention of its own bye-law, for the Act authorises the Committee to prosecute an offender or demolish a structure only when it is erected without its permission in writing. Although the Committee had no power to grant the permission, it would be estopped from withdrawing it and requiring the plaintiff to demolish the structure. Further, there is no provision in the Act enabling the Committee to revoke a permission once given. 36 P.L.R. 124=1934 Lah. 1021. Where the building of a tahir (platform) is sanctioned by the Municipal Committee on the site belonging to the owner but it is built on the street, it must be deemed to have been built on the street without the written permission of the Committee. The Committee can issue a notice requiring the owner to remove the encroachment and the failure to comply with such a notice renders the owner liable to prosecution. 35 P.L.R. 355=1934 Lah. 447.

Municipal Committee refusing permission to build—Right of aggrieved party to move the Civil Court.—A person aggrieved by a resolution or order passed by a Municipal Committee is entitled to claim redress in a Civil Court if he can satisfy it that the act of the Committee is arbitrary, oppressive or *ultra vires*. Where a Municipal Committee refuses permission to build on the ground that the land in dispute belongs to the Committee, the aggrieved party can move the Civil Court to adjudicate on the question of title and to issue an injunction to the Municipal Committee for restraining it from preventing him from building on the land merely on the ground that there is a dispute as to the land on which it is proposed to build. 115 I.C. 755=1929 Lah. 774. A Court is not ordinarily entitled to decide the question of sufficiency or otherwise of the reasons given by the Committee to refuse sanction to build but it is entitled to see whether the reasons for which sanction has been refused are not *ultra vires* or are not arbitrary or capricious. If a Committee acts *ultra vires* or arbitrarily or capriciously in refusing sanction a Civil Court is competent to give relief to the persons aggrieved against its action. 133 I.C. 549=1932 L. 59. Though the Committee is not bound to record any reasons in the resolution refusing sanction it would be well-advised to communicate the reasons to the applicants. 133 I.C. 549= 1932 L. 59. The sanction of the Committee is only necessary on sanitary and general public grounds and a sanction so give does not prevent the Municipal Committee from taking any steps which it may think fit, in order to assert its rights to its own private property and if the wall in which the doors were built and the land on which the doors were open were both the property of the Committee, the Committee is not prevented from so doing by the implied sanction. 1935 Lah. 131. The right to super-

(2) Every document furnished under sub-section (1) shall contain such particulars and be prepared in such manner as may be required under rules or by-laws.

Necessity for prior approval of site.

198. The [1][executive authority] shall not grant permission to construct or reconstruct a building unless and until he has approved of the site on an application made under section 197.

Prohibition against commencement of work without permission.

199. The construction or reconstruction of a building shall not be begun unless and until the [1][executive authority] has granted permission for the execution of the work.

Period within which executive authority is to signify approval or disapproval.

200. Within thirty days after the receipt of any application made under section 197 for approval of a site or of any information or further information required under rules or by-laws the [1][executive authority] shall by written order either approve the site or refuse on one or more of the grounds mentioned in section 203 to approve the site.

Period within which executive authority is to grant or refuse to grant permission to execute work.

201. Within thirty days after the receipt of any application made under section 197 for permission to execute any work or of any information or of documents or further information or documents required under rules or by-laws, the [1][executive authority] shall by written order either grant such permission or refuse on one or more of the grounds mentioned in section 203 to grant it:

LEG. REF.

1. These words were substituted for the word 'chairman' by section 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

---

vise the drain and to have a right of way to the drain is accessory to the right to the drain and the Committee are, therefore, entitled to demand reasonable convenience for cleaning and supervising the drain. (45 P. R. 1905, Foll.) 100 I. C. 813=1927 Lah. 891.

Sec. 199.—*Applicability and scope—Prosecution for contravention—Question for consideration—Charge—Particulars—S.* 317 (a).—Though S. 199 is not a penal provision, it prohibits the commencement of a construction or re-construction of a building without the permission of the authority concerned, and the violation of the provision is made an offence under S. 317 (*a*) of the Act. It is therefore essential in a charge under S. 199 read with section 317 (*a*) to mention section 199 also and a mere mention of S. 317 alone is unmeaning). To sustain a conviction under S. 199 read with S. 317 (a), it is not necessary that the discovery of the commission of the offence should be made on the same day on which the offence was committed. The date of the discovery of the offence is not material to the question whether an offence was really committed or not. The sole question for consideration is whether the act complained of was done without the requisite sanction. 1955 An.W.R. 7.

Alteration—What is.—The mere substitution of new bricks for old ones in a platform on the ground does not constitute anything more than repairs to such platform. 19 I. C. 781=122 P.L.R. 1913. In granting sanction, the Municipal Committee ordered that the plaintiff should not build his wall within two feet of a certain open space which was originally about five feet and four inches wide. In spite of this order, the plaintiff built his house and thereupon the Committee served a notice on him requiring him to demolish the upper storey. The plaintiff sued for an injunction. *Held,* that the questions of *good faith*, or *mala fides* of the Municipal Committee in imposing the condition was one of fact, and could not be considered in second appeal. 75 P.R. 1916=140 P.L.R. 1916=35 I.C. 377. Sanction—Form of—Power to add conditions to sanction or to cancel it. *See* 36 P.L.R. 277=1934 Lah. 1011.

Sec. 199.—*Notice before taking action—Necessity—Ss.* 201, 202 *and* 317.—Issue of notice is not contemplated for taking any action under Ss. 199 and 317 of the Act. S. 201 does not speak of any notice; nor does S. 202 show that any notice is contemplated. It cannot therefore be said that a prior notice is necessary before prosecuting a person for commencing a construction without obtaining a licence under S. 199. (1958) 1 An. W.R. 536=1958 An.L.T. 75

Provided that the said period of thirty days shall not begin to run until the site has been approved under section 200.

Reference to council if executive authority delays grant or refusal of approval or permission.

202. (1) If within the period prescribed by section 200 or section 201, as the case may be, the [1][executive authority] has neither given nor refused his approval of a building site, or his permission to execute any work, as the case may be, the council shall be bound, on the written request of the applicant, to determine by written order whether such approval or permission should be given or not.

(2) If the council does not, within one month from the receipt of such written request, determine whether such approval or permission should be given or not, such approval or permission shall be deemed to have been given; and the applicant may proceed to execute the work, but not so as to contravene any of the provisions of this Act or any rules or by-laws made under this Act.

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

=1958 Cr.L.J. 122=(1958) M.L.J. (Cri.) 457.

Notice—When valid.—The Civil Court has jurisdiction to decide whether the notice issued under S. 205 is valid. Where there is a mere re-erection of a building on the foundations of an old wall a notice, under S. 205 is not competent. 138 I.C. 743=1932 Lah. 597. The Municipal Committee has power to require a building to be demolished, and a Magistrate cannot interfere with the exercise of the power and is not competent to prohibit the demolition of the building, the remedy of the accused, if he is aggrieved by the notice, being to appeal to the Commissioner. 99 I.C. 80=1927 Lah. 69. *See also* 99 I.C. 944=1927 Lah. 58=8 L. 103. Plaintiff constructed a *chabutra* in contravention of the sanction of the Municipality and the Municipality ordered its demolition. Plaintiff sued for an injunction urging that his plan was more advantageous to the public than would be the building as sanctioned, but this was negatived. *Held,* that no second appeal lay in the case. The Court could not go into the question of advantage to the public. 107 P.L.R. 1915=29 I.C. 766. Notice within six months of knowledge of eviction—Validity. *See* 1930 Lah. 478=127 I.C. 221. The Committee has no power to enforce conditions regulating the line of frontage unless the intended building abuts on a street. 73 I.C. 725=1923 Lah. 417. *See also* 1930 Lah. 547; 61 Cal. 326=151 I.C. 732=59 C.L.J. 79=38 C.W.N. 357=1934 Cal. 506. The Board has controlling voice not only in cases of erection of new building or new part of a building, but also in cases of re-erection or material alteration. 1929 A. 756=119 I.C. 248. A Municipal Committee is competent to remove a *Thara* whether old or new, but in the former case it is necessary to give compensation. 19 I.C. 781=122 P.L.R. 1913. Construction or reconstruction is an offence but not maintenance of a building already in existence. 50 M. 760=1927 M. 501=52 M.L.J. 620. If no reply is given to a notice given to a Municipality for erection, or repairing a house within six weeks from the date of service, such silence amounts to an irrevocable sanction of the Municipality. 19 I.C. 781=122 P.L.R. 1913. *See also* 9 P.R. 1901 (Cr.) (Case-law reviewed). Sanction for building—Obligation to begin work within the period fixed by the order—Completion within such period is not necessary. 61 P.R. 1905 (Cr.) (But *see S.* 204, infra). Steps constructed with Committee's sanction—Commissioner's sanction found to be necessary—Subsequent order for removal—Disobedience of—No offence. 6 P.R. 1891 (Cr.) *see also* 11 P.R. 1904 (Cr.). Secs. 199 and 317 (c)—Construction or re-construction of a building without express permission—When offence. *See* 49 Cr.L.J. 682 =A.I.R. 1948 Mad. 466.

Secs. 201 *and* 202—Notice before taking action for contravention—Necessity. *See* (1958) 1 An. W. R. 536, cited under S. 199, *supra*.

Sec. 202.—*See* 140 I.C. 185=9 O.W.N. 870=1932 O. 306; 1932 All. 264. Where an application is made to the Municipal Board for permission to erect a building, but is not promptly dealt with by the Board, the applicant is not justified in proceeding with the erection in anticipation of sanction. He should call the attention of the Board to the matter under S. 202. An application by him after erection of the building is not sufficient and cannot be regarded as one under S. 202. 154 I.C. 45=1935 Oudh 197. *See also* 19 I.C. 781=122 P.L.R. 1913.

Grounds on which approval of site for, or licence to construct or reconstruct building, may be refused.

203. The only grounds on which approval of a site for the construction or reconstruction of a building or permission to construct or reconstruct a building may be refused are the following, namely:—

(1) that the work, or use of the site for the work or any of the particulars comprised in the site plan, ground plan, elevations, sections or specification would contravene some specified provision of any law, or some specified order, rule, declaration or by-law made under any law;

(2) that the application for such permission does not contain the particulars or is not prepared in the manner required under rules or by-laws;

(3) that any of the documents referred to in section 197 have not been signed as required under rules or by-laws;

(4) that any information or documents required by the [1][executive authority] under rules or by-laws has or have not been duly furnished;

(5) that streets or roads have not been made as required by section 175; or

(6) that the proposed building would be an encroachment upon [2][(Government) or municipal land].

Whenever the [1][executive authority] or the council refuses to approve building-site for a building or to grant permission to construct or reconstruct a building, the reasons for such refusal shall be specifically stated in the order or resolution.

Lapse of permission.

204. If the construction or reconstruction of any building is not completed within the period specified the permission shall lapse and a fresh application shall be made before the work is continued.

Power of executive authority to require alteration of work.

205. (1) If the [1][executive authority] finds that the work—

(*a*) is otherwise than in accordance with the plans or specifications which have been approved, or

(*b*) contravenes any of the provisions of this Act or any bye-law, rule, order or declaration made thereunder,

he may by notice require the owner of the building within a period stated either —

(i) to make such alterations as may be specified in the said notice with the object of bringing the work into conformity with the said plans or provisions, or

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. The words "Crown or municipal land" were substituted for the words 'Government or Municipal land' by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word "crown", the word "Government' was substituted by A.L.O., 1950.

Sec. 204.—*See* 61 P.R. 1905 (Cr.)=3 Cr.L.J. 344=44 P.L.R. 1906.

Sec. 205.—The respondent entered into an arrangement with the Municipality for the supply of water to his house, and in accordance with the provisions of S. 147 of the Madras District Municipalities Act of 1884, the meter was supplied by the respondent. Repairs to the meter were effected by the Municipality and the latter claimed from the respondent the repair charges. The respondent denied liability for the same. *Held*, that the meter was a work necessary for "such supplies" within the meaning of S. 147 (4) of the District Municipalities Act of 1884 and the respondent was therefore liable for the cost of the repair both under S. 147 (4) of the old Act and under the new Act of 1920 and the bye-laws thereunder. 209 I.C. 595=1943 M.W.N. 467=A.I.R. 1943 Mad. 555=(1943) 1 M. L. J. 415.

(ii) to show cause why such alteration should not be made.

(2) If the owner does not show cause as aforesaid, he shall be bound to make the alterations specified in such notice.

(3) If the owner shows cause as aforesaid, the [1][executive authority] shall by an order cancel the notice issued under sub-section (1) or confirm the same subject to such modifications as he may think fit.

Stoppage of work endangering human life.

206. Notwithstanding anything contained in any of the preceding sections, the [1][executive authority] may at any time stop the construction or reconstruction of any building if in his opinion the work in progress endangers human life.

Wells.

Application of certain sections to wells.

207. The provisions of section 197, section 198, section 199, section 204, section 205, and section 206 shall, so far as may be, apply to a well.

Huts.

Application to construct or reconstruct huts.

208. (1) Every person who intends to construct or reconstruct a hut shall send to the [1][executive authority]—

(*a*) an application for permission to execute the work, and

(*b*) a site-plan of the land.

(2) Every such application and plan shall contain the particulars and be prepared in the manner required by rule or by-law.

Prohibition against commencement of work without permission.

209. The construction or reconstruction of a hut shall not be begun unless and until the [1][executive authority] has granted permission for the execution of the work on an application sent to him under section 208.

Period within which executive authority is to grant or refuse to grant permission to execute the work

210. Within fourteen days after the receipt of any application made under section 208 for permission to construct or reconstruct a hut or of any information or plan or further information or fresh plan required under rules or by-laws, the [1][executive authority] shall by written order either grant such permission or refuse on one or more of the grounds mentioned in section 212 to grant it.

Reference to council if executive authority delays passing orders.

211.. (1) If, within the period prescribed by section 210, the [1][executive authority] has neither granted nor refused to grant permission to construct or reconstruct a hut, the Council shall be bound on the written request of the applicant, to determine by written order whether such permission should be granted or not.

(2) If the council does not, within thirty days from the receipt of such written request, determine whether such permission should be granted or not, such permission shall be deemed to have been granted; and the applicant may proceed to execute the work but not so as to contravene any of the provisions of this Act or any rules or by-laws made under this Act.

Grounds on which permission to construct or reconstruct may be refused.

212. The only grounds on which permission to construct or reconstruct a hut may be refused are the following, namely:—

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

(1) that the work or use of the site for the work would contravene some specified provision of any law or some specified order, rule, by-law or declaration made under any law;

(2) that the application for permission does not contain the particulars or is not prepared in the manner required under rules or by-laws;

(3) that any information or plan required by the [1][executive authority] under rules or by-laws has not been duly furnished;

(4) that streets or roads have not been made as reuired by section 175; or

(5) that the proposed building would be an encroachment upon [2][''Government) or municipal land].

Whenever the [1][executive authority] or the council refuses to grant permission to construct or reconstruct a hut the reasons for such refusal shall be specifically stated in the order or resolution.

Lapse of permission.

213. If the construction or reconstruction of any hut is not completed within the period specified the permission shall lapse and a fresh application shall be made before the work is continued.

External walls, alterations and additions.

Maintenance of external walls in repair.

214. The owner or occupier of any building adjoining a public street shall keep the external part thereof in proper repair with lime-plaster or other material to the satisfaction of the [1][executive authority].

Application of provisions to alterations and additions.

215. (1) The provisions of this chapter and of any rules or by-laws made under this Act relating to construction and reconstruction of buildings shall also be applicable to any alteration thereof or addition thereto:

Provided that works of necessary repair which do not affect the position or dimension of a building or any room therein shall not be deemed an alteration or addition for the purposes of this section.

(2) If any question arises as to whether any addition or alteration is a necessary repair not affecting the position or dimensions of a building or room such question shall be referred to the council whose decision shall be final.

Powers of the [1][executive authority].

Demolition or alteration of building work unlawfully commenced, carried on or completed.

216. (1) If the [1][executive authority] is satisfied:

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. The words ''Crown or Municipal land'' were substituted for the words 'Government or municipal land' by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937; and for the ''crown'' the word ''Government'' was substituted by A.L.O., 1050.

Sec. 215, *Proviso—''Affect''—Meaning of.* —The word ''affect'' should be given a liberal meaning and must be read as ''materially or substantially affect'', and not as ''mathematically or technically affect''. The increase of the walls on the gable side of a building in height by 6 or 7 inches would not necessarily result in an increase in the dimensions of the building. A small increase in the floor by a few inches cannot be said to affect the dimensions of the building. 67 L.W. 712=1954 2 M.L.J. 556. ''Alteration''—Meaning of. *See* S. 197 (1), *supra*.

Sec. 216.—Applicability. *See* (1958) M. L.J. (Cr.) 153=1958 Cr.L.J. 1186=1958 Ker. 279, cited under S. 338, *infra*.

(i) that the construction or reconstruction of any building or well—

(a) has been commenced without obtaining the permission of the [1][executive authority] or (where an appeal or reference has been made to the council) in contravention of any order passed by the council, or

(b) is being carried on, or has been completed otherwise than in accordance with the plans or particulars on which such permission or order was based, or

(c) is being carried on, or has been completed in breach of any of the provisions of this Act or of any rule or by-law made under this Act or of any direction or requisition lawfully given or made under this Act or such rules or by-laws, or

(ii) that any alterations required by any notice issued under section 205 have not been duly made, or

(iii) that any alteration of or addition to any building or any other work made or done for any purpose in, to or upon any building, has been commenced or is being carried on or has been completed in breach of section 215,

he may make a provisional order requiring the owner or the builder to demolish the work done, or so much of it as, in the opinion of the [1][executive authority], has been unlawfully executed or to make such alterations as may in the opinion of the [1][executive authority] be necessary to bring the work into conformity with the Act, by-laws, rules, direction or requisition as aforesaid, or with the plans and particulars on which such permission or order was based; and may also direct that until the said order is complied with the owner or builder shall refrain from proceeding with the building or well.

LEG. REF.

1. These words were substituted for the word "chairman" by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

Sec. 216.—Notice for demolition not authorised by the Act—Suit to restrain Municipality by injunction lies. I.L.R. (1939) All. 500=A.I.R. 1939 All. 383; where a person has obtained the permission and necessary sanction for a construction and carries out the construction without contravening any rule or regulation relevant thereto, the issue of a notice to such a person is beyond the powers of the Board. I. L. R. (1939) All. 500=184 I.C. 385=1939 A. L.J. 332=A.I.R. 1939 All. 383. It is true that power is vested in the Municipal Committee to require the domilition of a building which is erected without the necessary sanction, but this power is vested in the committee to meet extreme cases of defence or cases in which encroachments are made on municipal lands or rules framed by the Committee on hygienic or sanitary grounds are flaggrantly ignored. Where, however, this is not the case and the only infringement of the law is a disregard of the provision requiring every person not to erect any building without the sanction of the Committee, the law provides an alternative remedy and that is to penalise the offender in such sum as the Committee may deem reasonable. 42 P.L.R. 221=1940 L. 185. The erection of a portion of a building without obtaining the written permission of the Corporation is unlawful and the Corporation can under S. 363 of the Calcutta Municipal Act obtain from the Municipal Magistrate an order for the demolition of such erection. The section does not give the Magistrate any power to enquire as to whether the sanction was rightly withheld or not. 180 I.C. 907=68 C.L.J. 476= A.I.R. 1939 Cal. 285. *See also* 41 C.W. N. 1373=1938 C. 36. There is no provision to enable the Committee to issue a notice to alter or demolish a building which has been sanctioned by it and which has been constructed in conformity with such sanction and during the existence of the sanction. Even, in respect of a building which has been deemed to have been sanctioned by it, the powers of the Committee are limited as indicated in the sanction. So if a person relying on the sanction of the Municipality builds a good portion of the building before such sanction is cancelled, the Municipality cannot order him to demolish the building. 39 P.L.R. 411=A.I.R. 1937 Lah. 201. *See also* A.I.R. 1937 Lah. 84. The mere fact that there has been reconstruction of a building without sanction does not give the Magistrate a

(2) The [1][executive authority] shall serve a copy of the provisional order made under sub-section (1) on the owner of the building or well together with a notice requiring him to show cause within a reasonable time to be named in such notice why the order should not be confirmed.

(3) If the owner fails to show cause to the satisfaction of the [1][executive authority], the [1][executive authority] may confirm the order with any modification he may think fit to make, and such order shall then be binding on the owner.

LEG. REF.

1. These words were substituted for the word "chairman" by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

---

right to order demolition under S. 303 of the Calcutta Municipal Act, unless there has been erection of a new building or alteration of or addition to the existing building within the meaning of the Act. 180 I.C. 824=40 Cr.L.J. 528=A.I.R. 1939 Cal. 289. Where a Municipal Committee has served notice on a person to remove structures on the ground that the land belonged to the Committee and that person brings a suit for a declaration that the site in dispute was owned and possessed by him without giving notice to the Committee, the suit is not barred. 41 P.L.R. 771 =A.I.R. 1939 Lah. 254. *See also* A. I.R. 1937 All. 444. A Civil Court has no jurisdiction to entertain a suit for an injunction restraining a Municipal Board from demolishing a building at the instance of a person who has been served with a notice by the Municipal Board under the U.P. Municipalities Act for the demolition of the construction. Any objection to the validity of a notice must be raised by way of appeal to the District Magistrate who is the appellate authority, and if this remedy is not availed of it cannot be questioned in any other manner or by any other authority. Under S. 321 the order of the Municipal Board or of the appellate Court is final and cannot be questioned in the Civil Court which has no jurisdiction to go behind the notice issued by the Board. 168 I.C. 689=1937 A.L.J. 180=A.I.R. 1937 All 298. It rests with the Court to determine whether the time specified in any notice is a reasonable time for the performance of the required act. It was held in this case that a period of three days fixed by a notice under S. 186, for the demolition of a wall was not a reasonable time. 177 I.C. 90=39 Cr.L.J. 862=1938 O.W.N. 833= A.I.R. 1938 Oudh 199=14 Luck. 147. Where a Municipal Board which has no executive officer has delegated the powers under U.P. Municipalities Act to the Medical Officer, such Medical Officer is perfectly competent to issue notices and the notices issued by him are quite valid and legal. 174 I.C. 445=1937 A.L.J. 1358 =A.I.R. 1938 All. 110.

Sec. 216 (1)—Reconstruction. *See* (1954) 2 M.L.J. 556, cited under S. 3 (3), *supra*, which holds that the mere demolition and reconstruction of the walls on new foundations would not amount to "reconstruction" of a building.

Sec. 216 (1) (*iii*)—*Applicability*.—Erection of building not in accordance with approved plan—Power to direct demolition. S. 216 does not empower a municipality to direct demolition of a building merely because the building ultimately erected is not in accordance with the approved plan.. It is necessary for the municipality and, if the matter comes before the Court, for the Court, to satisfy itself whether the building is not in conformity with the Act, bye-laws, rules direction or requisition. The discretion vested in the executive officer is not absolute or arbitrary but is subject to the provisions of S. 203. Whatever the liability of a person may be to be prosecuted it is not open to the municipality to enforce the demolition of the building, *see* (1955) An.W.R. 384.

Sec. 216 (3).—Order for removal of construction—Nature of—Power of Court to interfere—Discretionary orders. The question whether in a particular case demolition or a lesser penalty allowed by the statute is appropriate is a matter for exercise of the discretion vested in the statutory authority under the Municipalities Act. The Civil Courts can however interfere even with the discretionary orders of public bodies if those orders are an abuse of the power vested in them, or in other words, are in any way unreasonable, arbitrary, capricious, oppressive or partial: A.I.R. 1941 Lah. 200, Rel. on. (1959) 2 Andh. W.R. 69.

Sec. 322.—Applicability—Jurisdiction of civil Court—When barred. *See* Madras District Municipal Act, Ss. 197 (1), 215 (1) and 322. (1959) 2 An.W.R. 69.

Secs. 216 *and* 338.—Applicability and Scope of—Building commenced and completed before receipt of licence—Notice under S. 338 to pull down—Failure to accept notice—Demolition of building by Municipality—Legality of—Maxim *generalia specialibus non derogant*—Application of. I.L.R. (1941) Mad. 406=195 I.C. 301=1941 M.W.N. 46=A.I.R. 1941 Mad. 259= (1940) 2 M.L.J. 1032.

Secs. 216, 317 *and* 347, *Proviso*.—The complaint against the petitioner was that he made some additions to his buildings situate within Municipal limits without obtaining a licence. He applied for a licence on 20th April, 1942 and it was shown

Exemptions.

Exemptions.

217. (1) Any building constructed and used, or intended to be constructed and used, exclusively for the purpose of a plant-house, summer-house (not being a dwelling-house), poultry-house or aviary, shall be exempted from the provisions of this chapter other than section 196 provided that building be wholly detached from, and situated at a distance of at least ten feet from, the nearest adjacent building.

(2) The [1][executive authority] may grant permission at his discretion on such terms as he may decide in each case to erect for a specified period temporary huts or sheds for stabling, for watching crops, for storing tools or materials, or for other similar purposes. On expiry of the period specified, the [1][executive authority] may by notice require the owner of such hut or shed to demolish it.

CHAPTER XI.

Nuisances.

Dangerous structures, trees and places.

Precautions in case of dangerous structures.

218. (1) If any structure appears to the [1][executive authority] to be in a ruinous state and dangerous to the passers by or to the occupiers of neighbouring structures the [1][executive authority] may by notice require the owner or occupier to fence off, take down, secure or repair such structure so as to prevent any danger therefrom.

LEG. REF.

1. These words were substituted for the word 'chairman' by section 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

---

that the buildings were completed on 25th May, 1942. The prosecution was launched on 21st December, 1942. Held, that as the complaint was filed within twelve months from the date of the application of the petitioner the provisions of S. 347 of the Act were complied with. Held, further, that in such a case the fact that the Municipality had a remedy under S. 216 for requiring the new buildidng to be demolished could not disentitle them from taking proceedings under S. 317 of the Act. 216 I.C. 193=46 Cr.L.J. 148=1944 M.W.N. 498 (2)= A.I.R. 1944 Mad. 476=(1944) 2 M.L.J. 44.

Secs. 216, 317 *and* 341. —Limitation for prosecution under S. 216. The owner has the right after service on him of the provisional order to show cause within the prescribed time why the order should not be confirmed; and it is only after the expiry of the prescribed time and on failure of the owner to show sufficient cause that the provisional order can be confirmed. An offence therefore can be found to have been committed only after the passing of the confirming order and its service upon the owner. S. 317 makes it clear that it is the final order or confirming order passed under S. 216 (3) and not the provisional order under S. 216 (1) and (2) that would provide the starting point of limitation for the commencement of the prosecution. A charge sheet filed within three months of the service of the final order would be in time (1948) 1 M.L.J. 413=61 L.W. 433=1948 M.W.N. 677=49 Cr.L.J. 703=A.I.R. 1948 Mad. 470.

Sec. 218.—A notice to demolish issued under this section must specify the dangerous portion and the repairs. 9 P.R. 1916 Cr.=32 I.C. 841. Non-compliance with requisition for carrying out improvements owing to obstruction by some tenants—Owner is discharged from liability only to the extent that compliance is rendered impossible by the conduct of the tenant. 1924 C. 334=50 C. 813=27 C.W.N. 787. A notice requiring the owner of a building requiring him merely to demolish the building without giving him the choice of one of the alternatives of securing or repairing it also is not illegal. 15 Pat. 36=17 Pat.L.T. 123=1936 Pat. 282. It is not necessary for the legality of a notice requiring the demolition of a building, that the building should be found by the Courts to have been in a ruinous condition and dangerous to persons or property. The scheme of this Act is that it is for the Municipality to decide not only whether a building is in a ruinous condition or dangerous to persons or property, but also whether demolition is necessary or repairs would suffice. The decision of the Municipality cannot be questioned in the

(2) If immediate action is necessary the [1][executive authority] shall himself before giving such notice or before the period of such notice expires, fence off, take down, secure or repair such structure or fence off a part of any street or take such temporary measures as he thinks fit to prevent danger and the cost of doing so shall be recoverable from the owner or occupier in the manner provided in section 344.

(3) If in the [2][opinion of the executive authority] the said structure is imminently dangerous to the inmates thereof, the [1][executive authority] shall order the immediate evacuation thereof and any person disobeying may be removed by any police officer.

Precautions in case of dangerous trees.

219. (1) If any tree or any branch of a tree or the fruit of any tree appears to the [1][executive authority] to be likely to fall and thereby endanger any person or any structure the [1][executive authority] may by notice require the owner of the said tree to secure, lop, or cut down the said tree so as to prevent any danger therefrom.

(2) If immediate action is necessary the [1][executive authority] shall himself before giving such notice or before the period of such notice expires, secure, lop or cut down the said tree or remove the fruit thereof or fence off a part of any street or take such other temporary measures as he thinks fit to prevent danger, and the cost of so doing shall be recoverable from the owner of the tree in the manner provided in section 344.

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act. 1933) (Madraas Act XV of 1933).

2. These words were substituted for the words 'chairman's opinion' by S. 17 (2), ibid.

Courts. The rate-payer is not, however, absolutely helpless, for he has the alternative of preferring an objection under the Act. If he disputes the necessity for doing the thing required by the notice, he is entitled to prefer an objection to the proper authorities. 15 Pat. 36=17 Pat. L.T. 123 =1936 Pat. 282. In a prosecution of the owner or occupier of a building who has failed to comply with a notice requiring him to demolish the building or to file objections, it is not open to the owner or occupier to contend in answer to the prosecution that the building was not in a ruinous or dangerous condition and that no demolition in fact was necessary. Neither the fact that repairs have been carried out by the owner nor the condition of the building as it appears to the trying Magistrate on inspection of the building has any bearing on the question of the liability of the owner to be convicted and fined for failure to comply with the requisition. 15 Pat. 36=17 Pat. L.T. 123=1936 Pat. 282. Per King, C.J.—The Municipal Board is competent to issue a written notice to the owner of any land directing him to demolish a building upon the land in any case where the Board considers that the erection of the building is an offence under the Act. It is for the Board to decide whether the erection of the building is an offence. The Board may be right or wrong in its decision, but if it considers that the erection of the building amounts to an offence, then it is competent to issue a notice. 155 I.C. 344=1935 Oudh 337=11 Luck. 123 (F.B.). Municipality has power to direct owner to demolish an old wall and rebuild a new one in place of the old if the same is justified by circumstances. 13 P.R. 1908 (Cr.)=8 Cr.L.J. 258. Discretion as to demolition of build--ing should be exercised on equitable grounds by the Magistrate. 1929 C. 781=33 C.W.N. 777=125 I.C. 740. Demolition of unlawfully erected work is not a punishment. 1927 C. 509=54 C. 532=31 C.W.N. 506. Order prohibiting proposed erection of a structure is not invalid, merely because the Committee has not stated the reasons for the refusal. The Committee is not bound to state its reasons. Civil Courts are not competent to interfere with the discretion of the Committee if exercised *bona fide*. 24 P.R. 1890 (Cr.) See also 11 P.R. 1904 (Cr.); 1 P.R. 1906 (Cr.). Action of the Municipality preventing an owner of land from building on about a third of his land because the land unbuilt on forms an open lung in a congested area and further congestion in the area would create insanitary conditions which would endanger the health of the locality is in excess of the powers possessed by them. The proper procedure for the Municipality to adopt in such a case is to acquire the plot in the interest of the health of the locality. 1933 Sind 227.

Precautions in case of dangerous tanks, wells, holes, etc.

220. (1) If any tank, pond, well, hole, stream, dam, bank or other place appears to the [1][executive authority] to be for want of sufficient repair, protection or enclosure dangerous to the passers-by or to persons living in the neighbourhood, the [1][executive authority] may by notice require the owner to fill in, remove, repair, protect or enclose the same so as to prevent any danger therefrom.

(2) If immediate action is necessary he shall, before giving such notice or before the period of notice expires, himself take such temporary measures as he thinks fit to prevent danger and the cost of doing so shall be recoverable from the owner in the manner provided in section 344.

Powers to stop dangerous quarrying.

221. If in the opinion of the [1][executive authority] the working of any quarry or the removal of stone, earth or other material from any place is dangerous to persons residing in or having legal access to the neighbourhood thereof or creates or is likely to create a nuisance the [1][executive authority] may require the owner or person having control of the said quarry or place to discontinue working the same, or to discontinue removing stone, earth or other material from such place or to take such order with such quarry or place as he shall deem necessary for the purpose of preventing danger or abating the nuisance arising or likely to arise therefrom.

Precautions against fire.

222. (1) The [1][executive authority] may by notice require the owner of any structure, booth or tent partly or entirely composed of, or having any external roof, verandah, pandal or wall partly or entirely composed of cloth, grass, leaves, mats, or other highly inflammable materials to remove or alter such tent, booth, structure, roof, verandah, or pandal or wall, or may grant him permission to retain the same on such conditions as the [1][executive authority] may think necessary to prevent danger from fire.

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Mad. Act XV of 1933).

Sec. 219 (1).—See 21 L.W. 280=90 I.C. 152=1925 M. 584 cited under S. 313, *infra*.. The fact whether the chairman is justified in forming his opinion as to the dangerous condition of a tree is not a matter for the decision of the Court. 21 L.W. 280.

Sec. 219. Scope of—Old and dangerous tree standing on land of private owner—Municipality erecting post near tree having full knowledge of dangerous condition of tree—Failure to call on owner to remove tree—Tree falling and damaging post—Right to recover damages from owner of tree—Contributory negligence. 44 L.W. 891=1937 M. 152=(1937) 1 M.L.J. 125.

Sec. 221: *Scope and object of the Section.*—The object of the section is to empower the Committee to forbid excavations in order to preserve the soil or to prevent landslips, and it is not intended that a person should be prohibited from making an excavation or a hole or a cavity in his own estate for domestic purposes which cannot cause any landslip or danger to the public. 117 I.C. 801=1929 Lah. 845. Where, therefore, an alleged excavation is made on a private estate for making charcoal and the complainant does not produce any evidence to prove the nature or the dimensions of the excavation, nor is there any warrant for the assumption that the prevention of the excavation is necessary for any of the purposes mentioned in the section the accused cannot be said to have done an act contrary to the provisions of law. (Ibid.)

Offensive business.—Decision of Municipal Council is final; and unless the Council's action is wanton, unreasonable or tainted with *mala fides*, Civil Court has no jurisdiction to interfere with its decision. 49 I.C. 881. See also 6 P.R. 1919=46 I.C. 571.

(2) The [1][executive authority] may by notice require any person using any place for the storage for private use of timber, firewood, or other combustible things to take special steps to guard against danger from fire.

(3) Where the [1][executive authority] is of opinion that the means of egress from any building are insufficient to allow of safe exit in the event of fire, he may with the sanction of the council by notice require the owner or occupier of the building to alter or reconstruct any staircase in such manner or to provide such additional or emergency staircases as he may direct; and when any building, booth or tent is used for purposes of public entertainment he may require, subject to such sanction as aforesaid, that it shall be provided with an adequate number of clearly indicated exits so placed and maintained as readily to afford the audience ample means of safe egress, that the seating be so arranged as not to interfere with free access to the exits and that gangways, passages, and staircases leading to the exits shall, during the presence of the public, be kept clear of obstructions.

Control over waters, etc.

Prohibition of construction of wells, tanks, etc., without the permission of the executive authority.

223. (1) No new well, tank, pond, cistern fountain or the like shall be dug or constructed without the permission of the [1][executive authority].

(2) The [1][executive authority] may grant permission subject to such conditions as he may deem necessary, or may, for reasons to be recorded by him, refuse it.

(3) If any such work is begun or completed without such permission, the [1][executive authority] may either—

(a) by notice require the owner or other person who has done such work to fill up or demolish such work in such manner as the [1][executive authority] shall direct, or

(b) grant permission to retain such work, but such permission shall not exempt such owner from proceedings for contravening the provisions of sub-section (1).

Filling in of pools, etc., which are a nuisance.

224. (1) If in the opinion of the [1][executive authority]—

(a) any pool, ditch, tank, well, pond, bog, swamp, quarry-hole, drain, cesspool, pit, water-course, or any collection of water, or

(b) any land on which water may at any time accumulate

is or is likely to become a breeding-place of mosquitoes or in any other respect a nuisance, the [1][executive authority] may by notice require the owner or person having control thereof to fill up, cover over, weed and stock with larvicidal fish, petrolize, drain or drain off the same in such manner and with such materials as the [1][executive authority] shall direct or to take such order with the same for removing or abating the nuisance as the [1][executive authority] shall direct.

(2) If a person on whom a requisition is made under sub-section (1) to fill up, cover over, or drain off a well, delivers to the [1][executive authority]

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Mad. Act XV of 1933).

within the time specified for compliance therewith written objections to such requisition, the [1][executive authority] shall report such objections to the council, and shall make further inquiry into the case, and he shall not institute any prosecution for failure to comply with such requisition except with the approval of the council, but the [1][executive authority] may nevertheless if he deems the execution of the work called for by such requisition to be of urgent importance, proceed in accordance with section 339 and, pending the council's disposal of the question whether the said well shall be permanently filled up, covered over, or otherwise dealt with, may cause such well to be securely covered over so as to prevent the ingress of mosquitoes, and in every such case the [1][executive authority] shall determine with the approval of the council whether the expenses of any work already done as aforesaid shall be paid by such owner or by the [1][executive authority] out of the municipal fund or shall be shared, and if so, in what proportions.

Regulation or prohibition of certain kinds of cultivation.

225. The council on the report of the [2][Director of Public Health] the Health Officer or the Local Medical Officer that the cultivation of any description of crop, or the use of any kind of manure, or the irrigation of land in any place within the limits of the municipality is injurious to the public health may, with the previous sanction of the [3][(State) Government] by public notice regulate or prohibit the cultivation, use of manure, or irrigation so reported to be injurious:

Provided that when such cultivation or irrigation has been practised during the five years preceding the date of such public notice with such continuity as the ordinary course of husbandry admits of, compensation shall be paid from the municipal fund to all persons interested for any damage caused to them by absolute prohibition.

Cleansing of insanitary private tank or well used for drinking.

226. (1) The [1][executive authority] may by notice require the owner of or person having control over any private water-course, spring, tank, well or other place, the water of which is used for drinking, bathing or washing clothes to keep the same in good repair and to cleanse it of silt, refuse or vegetation and to protect it from pollution by surface drainage in such manner as the [1][executive authority] may think fit.

(2) If the water of any place which is used for drinking, bathing or washing clothes, as the case may be, is proved to the satisfaction of the [1][executive authority] to be unfit for the purpose, the [1][executive authority] may by notice require the owner or person having control thereof to—

(a) refrain from using or permitting the use of such water, or

(b) close or fill up such place or enclose it with a substantial wall or fence:

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. These words were substituted for the words 'Sanitary Commissioner' by S. 102 of the Madras District Municipalities (Amendment) Act, 1930 (Mad. Act X of 1930).

3. The words "Provincial Government" were substituted for the words "Local Government" by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws), Order, 1937; and for the word "Provincial the word 'State' was substituted by A.L.O., 1950.

Duty of council in respect of public well or receptacle of stagnant water.

227. The municipal council shall maintain in a cleanly condition all wells, tanks and reservoirs which are not private property, and may fill them up or drain them when it appears necessary to do so.

Public wells, etc., open to all.

[1][227-A. All such wells, tanks and reservoirs when maintained by the municipal council shall be open to use and enjoyment by persons of whatever caste or creed]

Prohibition against or regulation of washing animals or clothes or fishing or drinking in public water-courses, tanks, etc.

228. The Council may, in the interests of the public health, regulate or prohibit the washing of animals, clothes or other things, or fishing in any public spring, tank, well, public water-course or part thereof within the municipality and may set apart any such place for drinking or for bathing or for washing clothes, or animals, respectively, or for any other specified purpose.

Provision of public wash-house.

229. (1) The council may construct or provide and maintain public wash-houses or places for the washing of clothes, anl may require the payment of such rents and fees for the use of any such wash-house or place as it may determine.

(2) The council may farm out the collection of such rents and fees for any period not exceeding three years at a time on such terms and conditions as it may think fit.

(3) If a sufficient number of public wash-houses or places be not maintained under sub-section (1), the council may without making any charge therefor appoint suitable places for the exercise by washermen of their calling.

Prohibition against washing by washermen at unauthorized places.

230. (1) The council may by public notice prohibit the washing of clothes by washermen in the exercise of their calling, either within the municipality or outside the municipality within three miles of the boundary thereof, except at—

(a) public wash-houses or places maintained or provided under section 229, or

(b) such other places as it may appoint for the purpose.

(2) When any such prohibition has been made no person who is by calling a washerman shall, in contravention of such prohition, wash clothes, except for himself or for personal and family service or for hire on and within the premises of the hirer, at any place within or without municipal limits other than a public wash-house or a place maintained or appointed under this Act:

Provided that this section shall apply only to clothes, washed within or to be brought within the municipality.

LEG. REF.

1. This section was added by S. 3 of the Madras District Municipalities (Amendment) Act, 1929 (Madras Act XVII of 1929).

Prohibition against defiling water of tanks, etc., whether public or private.

231. In shall not be lawful for any person to—

(a) bathe in or in any manner defile, the water in any place set apart by the council or by the owner thereof for drinking purposes; or

(b) deposit any offensive or deleterious matter in the dry bed of any place set apart as aforesaid for drinking purposes; or

(c) wash clothes in any place set apart as aforesaid for drinking or bathing; or

(d) wash any animal or any cooking utensil or wool, skins or other foul or offensive substance or deposit any offensive or deleterious matter in any place set apart as aforesaid for bathing or washing clothes; or

(e) cause or suffer to drain into or upon any place set apart as aforesaid for drinking, bathing or washing clothes, or cause or suffer anything to be brought thereunto or do anything whereby the water may be fouled or corrupted.

Control over abandoned lands, untrimmed hedges, etc.

Untenanted buildings or lands.

232. If any building or land, by reason of abandonment, disputed ownership or other cause remains untenanted, and thereby becomes a resort of idle and disorderly persons or in the opinion of the [1][executive authority] becomes a nuisance, the [1][executive authority] may after due inquiry by notice require the owner or person claiming to be the owner to secure, enclose, clear or cleanse the same.

Removal of filth or noxious vegetation.

233. The [1][executive authority] may by notice require the owner or occupier of any building or land which appears to him to be in a filthy or unwholesome state, or overgrown with any thick or noxious vegetation, trees or undergrowth injurious to health or offensive to the neighbourhood, to clear, cleanse or otherwise put the land in proper state or to clear away and remove such vegetation, trees or undergrowth within twenty-four hours or such longer period and in such manner as may be specified in the notice.

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933.)

Sec. 233.—In order to amount to offences the orders disobeyed under this section must be recent breaches thereof. 77 I.C. 495=25 Cr.L.J. 415=1924 Lah. 670. Tenant allowing offensive matter to accumulate on land—Landlord not liable. 1931 Cal. 337=34 C.W.N. 931=131 I.C. 272.

Cases under Calcutta Municipal Act.—Per *Mukerjea, J.*—S. 371 of the Calcutta Municipal Act does not merely give a permissive right to the corporation to do certain things; it enjoins the performance of certain obligatory duties. It cannot be said therefore that the powers under the section must be exercised without creating a nuisance. As this is an obligatory duty, it must be performed but both in the selection of the site for disposal of the rubbish as well as in the method of doing its work, the Corporation is bound to see that the least practicable nuisance is created. The Corporation has got to approach the question from this standpoint, and if after considering these matters, it comes to a particular decision as to the site for disposal of its rubbish, the decision in the absence of any *mala fides* on its part should not be interfered with by Civil Courts. 44 C.W.N. 194=A.I.R. 1940 Cal. 67. Under S. 371 (1) of the Calcutta Municipal Act, the place of dumping rubbish need not be public in the sense that it must be one which can be availed of or used by the public in general nor is it necessary that it must be owned by the Corporation itself. The section does not purport to say anything as to whom the place of depositing or disposing of the rubbish should belong, nor does it authorise the Corporation to do any act

Fencing of buildings or lands and pruning of hedges and trees.

234. The [1][executive authority] may by notice require the owner or occupier of any building or land near a public street to—

(a) fence the same to the satisfaction of the [1][executive authority] or

(b) trim or prune any hedges bordering on the said street so that they may not exceed such height from the level of the adjoining roadway as the [1][executive authority] may determine; or

(c) cut and trim any hedges or trees overhanging the said street and obstructing it or the view of traffic or causing it damage; or

(d) lower an enclosing wall or fence which by reason of its height and situation obstructs the view of traffic so as to cause danger.

Control over insanitary buildings.

Lime-washing and cleansing of buildings.

235. The [1][executive authority] if it appears to him necessary for sanitary purposes so to do, may by notice require the owner or occupier of any building to limewash or otherwise cleanse the building inside and outside in the manner and within a period to be specified in the [notice.][2]

Further powers with reference to insanitary buildings.

236. (1) Whenever the [1][executive authority] considers—

(a) that any building or portion thereof is, by reason of its having no plinth, or having a plinth of insufficient height, or by reason of the want of proper drainage or ventilation or by reason of the impracticability of cleaning, attended with danger of disease to the occupiers thereof or to the inhabitants of the neighbourhood, or is, for any reason, likely to endanger the public health or safety, or

(b) that a block or group of buildings is, for any of the said reasons, or by reason of the manner in which the buildings are crowded together, attended with such risk as aforesaid,

he may by notice require the owners or occupiers of such buildings or portions of buildings or at his option, the owners of the land occupied by such buildings or portions of buildings, to execute such works or to take such measures as he may deem necessary for the prevention of such danger.

(2) No person shall be entitled to compensation for damages sustained by reason of any action taken under or in pursuance of this section save when a building is demolished in pursuance of an order made hereunder, or so far demolished as to require reconstruction, in which cases the municipal council shall make compensation to the owner thereof.

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act 1933 (Madras Act XV of 1933).

2. This word was substituted for the word 'order' by S. 103 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

---

which would amount to trespass under ordinary law. An arrangement for controlled dumping in insanitary tanks belonging to private owner on receipt of payment from them by the Corporation is fully covered by its terms. 44 C.W.N. 194=A.I.R. 1940 Cal. 67. Per *Mukerjea, J.*—If the act of the Corporation in dumping refuse on a private land is privileged as coming within the protection afforded by S. 371 of the Calcutta Municipal Act, the owner of that land by consenting to the act, cannot be made liable in law for nuisance, if any. 44 C.W.N. 194=A.I.R. 1940 Cal. 67.

(3) When any building is entirely demolished under this section and the demolition thereof adds to the value of other buildings in the immediate vicinity, the owners of such other buildings shall be bound to contribute towards the compensation payable to the owner of the first-named building in proportion to the increased value acquired by their own property.

(4) When any building is so far demolished under this section as to require reconstruction, allowance shall be made in determining the compensation for the benefit accruing to the premises from the improvement thereof.

Building unfit for human habitation.

237. (1) If any builing or portion thereof intended for or used as a dwelling-place appears to the [1][executive authority] to be unfit for human habitation, he may apply to the council to prohibit the further use of such structure for such purpose; and the council may, after giving the owner and occupiers of the structure a reasonable opportunity of showing cause why such order should not be made, make a prohibitory order as aforesaid.

(2) When any such prohibitory order has been made, the [1][executive authority] shall communicate the purport thereof to the owner and occupiers of the structure and on expiry of such period as is specified in the notice, not being less than thirty days after the service of the notice, no owner or occupier of such structure shall use or suffer it to be used for human habitation until the [1][executive authority] certifies in writing that the causes rendering it unfit for human habitation have been removed to his satisfaction, or the council withdraws the prohibition.

(3) When such prohibitory order has remained in operation for three months the [1][executive authority] shall report the case to the council, which shall thereupon consider whether the structure should not be demolished. The council shall give the owner not less than thirty days' notice of the time and place at which the question will be considered and the owner shall be entitled to be heard when the question is taken into consideration.

(4) If upon such consideration the council is of opinion that the structure has not been rendered fit for human habitation and that steps are not being taken with due diligence to render it so fit and that the continuance of the structure is a nuisance or dangerous or injurious to the health of the public or to the inhabitants of the neighbourhood, it shall record a decision to that effect, with the grounds of the decision; and the [1][executive authority] shall in pursuance of the said decision by notice require the owner to demolish the structure.

(5) If the owner undertakes to execute forthwith the works necessary to render the structure fit for human habitation and the [1][executive authority] considers that it can be so made fit, the [1][executive authority] may postpone the execution of the decision of the council for such time not exceeding six months as he thinks sufficient for the purpose of giving the owner an opportunity of executing the necessary works.

Abatement of overcrowding in dwelling-house or dwelling-place.

238. (1) If it appears to the [1][executive authority] that any dwelling-house or other building which is used as a dwelling-place or any room in such dwelling-house or building, is so overcrowded as to endanger the health of the inmates thereof, he may apply to a magistrate, to abate such overcrowding; and the magistrate after such

---

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

inquiry as he thinks fit to make, may, by written order, require the owner of the building, or room, within a reasonable time not exceeding four weeks to be specified in the said order, to abate such overcrowding by reducing the number of lodgers, tenants or other inmates of the building or room, or may pass such other order as he may deem just and proper.

(2) The council may, by written order, declare what amount of superficial and cubic space shall be deemed for the purposes of sub-section (1) to be necessary for each occupant of a building or room.

(3) If any building or room referred to in sub-sestion (1) has been sublet, the landlord of the lodgers, tenants, or other actual inmates of the same, shall, for the purposes of this section, be deemed to be the owner of the building or room.

(4) It shall be incumbent on every tenant, lodger or other inmate of a building or room to vacate on being required by the owner so to do, in pursuance of any requisition made under sub-section (1).

Control over certain animals.

Prohibition against feeding certain animals on filth.

239. No person shall feed or permit any animal, which is kept for dairy purpose or may be used for food, to be fed on filth.

Prohibition against keeping animal so as to be a nuisance or dangerous.

240. No person shall keep any animal on his premises so as to be a nuisance or so as to be dangerous.

Power to destroy stray pigs and dogs.

241. (1) The council may, and, if so directed by the district magistrate, shall, give public notice that unlicensed pigs or dogs straying within specified limits will be destroyed.

(2) When such notice has been given any person may destroy, in any manner not inconsistent with the terms of the notice, any unlicensed pig or dog (as the case may be) found straying within such limits.

General.

Power of executive authority to use or sell materials of dangerous structure taken down, etc., and procedure when there is no owner or occupier.

242. (1) When the [1][executive authority] takes down any structure or part thereof or cuts down any tree or hedge or shrub or part thereof or removes any fruit in virtue of his powers under this chapter, the [1][executive authority] may sell the materials or things taken down, cut down or removed, and apply the proceeds in or towards payment of the expenses incurred.

(2) If after reasonable inquiry it appears to the [1][executive authority] that there is no owner or occupier to whom notice can be given under any section in this chapter he may himself take such order with the property mentioned in such section as may appear to him to be necessary and may recover the expense incurred by the sale of such property (not being land) or of any portion thereof.

Limitation of compensation.

243. No person shall be entitled save as provided in sections 224, 225 and 236 to compensation for any damages sustained by reason of any action taken by the municipal authorities in pursuance of their powers under this chapter.

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

Sec. 241.—See 51 Mad. 876=1928 Mad. 847=55 M.L.J. 566. Distinction between no license and cancellation of license pointed out.

CHAPTER XII.

Licences and Fees.

[1][General Exemption.]

Government and market committees not to obtain licences and permissions.

244. [1][Nothing in this Act or in any rule, by-law or regulation made thereunder shall be construed as requiring the taking out of any licence or the obtaining of any permission under this Act or any such rule, by-law or regulation in respect of any place in the occupation or under the control of the Central or the *(State) Government or of a market committee established under the Madras Commercial Crops Market Act, 1938, or in respect of any †(Government) property or of any property belonging to such Market Committee.]

Keeping of animals.

Licences for places in which animals are kept.

245. (1) The owner or occupier of any stable, veterinary infirmary, stand, shed, yard, or other place in which quadrupeds are kept or taken in for purposes of profit, [1][shall apply to the executive authority for a licence not less than thirty and not more than ninety days before the opening of such place or the commencement of the year for which the licence is sought to be renewed, as the case may be.]

(2) The [2][executive authority] may, by an order and under such restrictions and regulations as he thinks fit, grant or refuse to grant such licence:

Provided that this section shall not apply to any such place licensed as a place of public entertainment or resort under the Places of Public Resort Act, 1888.

(3) No person shall without or otherwise than in conformity with a licence use any place for such a purpose.

General powers of control over stables, cattle-sheds and cow-houses.

246. (1) All stables, cattle-sheds and cow-houses shall be under the survey and control of the [2][executive authority] as regards their site, construction, materials and dimensions.

(2) The [2][executive authority] may by notice require that any stable, cattle-shed or cow-house be altered, paved, drained, repaired, disinfected or kept in such a state as to admit of its being sufficiently cleaned or be supplied with water, or be connected with a sewer, or be demolished.

LEG. REF.

1. Substituted by Madras Act XXXVIII of 1942.

*Substituted for the word "Provincial" by A.L.O., 1950.

†Substituted for the word "crown" by ibid.

2. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

Sec. 244.—A bye-law framed levying license fees may itself be unlawful, if the fee levied is exorbitant or so excessive as to make the bye-law itself unreasonable. 56 All. 241=1934 A.L.J. 80=1934 All. 39. The licence fees under the Act are only payable when licences are granted. Where no licence has ever been granted nor have they been applied for, the attempt to levy those fees by the distress and sale of the movable property of the people carrying on the various trades is illegal. 144 I.C. 830=1933 Lah. 814. The fee income from licence must be proportionate to the trouble and expense incurred by the Corporation in issuing licence and in controlling trades. If fees are imposed on any particular trade in an unreasonable manner, Courts can interfere. 52 M. 764 =1930 M. 55=57 M.L.J. 71.

Applicability—Private bodies—Right to exemption.—The exemption under section 244 does not extend to private trading

(3) Every such notice shall be addressed to the owner of the building or land to which the stable, cattle-shed or cow-house belongs, or for the use of the occupants of which the same was constructed or is continued.

(4) The expense of executing any work in pursuance of any such notice shall be borne by the said owner.

Power to direct discontinuance of use of building as stable, cattle-shed or cow-house.

247. If any stable, cattle-shed or cow-house is not constructed or maintained in the manner required by or under this Act, the [1][executive authority] may by notice direct that the same shall no longer be used as a stable, cattle-shed or cow-house. Every such notice shall state the grounds on which it proceeds.

[1][248. (Omitted.)]

Industries and Factories.

Purposes for which places may not be used without licence.

249. (1) The council may publish a notification in the district gazette and by beat of drum that no place within municipal limits or at a distance within three miles of such limits shall be used for any one or more of the purposes specified in Schedule V without the [2][licence of the executive authority] and except in accordance with the conditions specified therein.

LEG. REF.

1. This section was omitted by S. 104 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. These words were substituted for the words 'chairman's licence' by S. 17 (2) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

---

concerns at all and the municipality is not debarred from collecting licence fees from such concerns. The section is a special provision which exempts the Government and other bodies mentioned therein from the necessity for obtaining a licence for the purpose of storage of goods of the description contained in Schedule V to the Act. (1954) 2 M.L.J. 667=1954 Mad. 95.

Secs. 244 and 249: Running of coffee hotel by private person in railway premises with permission of railway authorities—Liability to take out licence.—When a private person runs a coffee hotel within railway premises with the permission of the railway authorities, he is under a liability to take out a licence under S. 249 of the Act. The fact that the premises where he runs the hotel is under the control and occupation of the Central Government does not exempt him from the necessity for taking out a licence. See (1955) 2 M.L.J. 555.

This case was followed in (1957) 2 M.L.J. 56=70 L.W. 517=(1957) Mad. 1020 =(1957) M.L.J. (Cr.) 324, where it was held that the exemption was only in favour of the activities of the Government and of the statutory bodies referred to in the section. The emphasis was on the activity and not upon the place where the activity is carried. Notwithstanding that a private person carries on a tea stall in railway premises under the occupation of the Central Government, the municipality is not precluded under S. 244 from acting under S. 249 and requiring the stall keeper to take out a licence.

Secs. 244 and 249—Applicability—Premises in the control and occupation of the Union Government—Private individual carrying on trade thereon—Levy of licence fee—Exemption.—Though the premises may be the property of the Union Government, still so long as it is in the territorial limits of a Municipality, the Municipality has jurisdiction to regulate and licence the trade carried thereon by a private individual. The exemption granted under S. 244 of the Act can only apply to activities carried on by the Government or the enumereted statutory bodies and not to private individuals carrying on a trade requiring a licence even though such trade might be carried on in the premises or the land owned by Government. (1957) 2 M.L.J. 56, followed. (1958) 1 M.L.J. 348=71 L.W. 122.

Sec. 249.—The terms of S. 249 are general, and the heading 'Industries and Factories' can in no way control the plain terms of the section. In a prosecution for failure to take out a licence for more than 10 head of cattle in a place within three miles of the municipal limits as required by the Notification under S. 249, the accused is not entitled to acquittal

[1][Provided that no such notification shall take effect.

(a) until sixty days from the date of publication, and

(b) except with the previous sanction of the [2][State Government] in any area outside the municipal limits.]

(2) The owner or occupier of every such place shall within thirty days of the publication of such notification apply to the [3][executive authority] for a licence for the use of such place for such purpose.

(3) The [3][executive authority] may by an order and under such restrictions and regulations as he thinks fit, grant or refuse to grant such licence.

(4) Every such licence shall expire at the end of the year unless for special reasons the [3][executive authority] considers it should expire at an earlier date; when it shall expire at such earlier date as may be specified therein.

(5) Applications for renewal of such licences shall be made not less than thirty days before the end of every year and applications for licences

---

LEG. REF.

1. This proviso was substituted for the original by S. 105 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word "Provincial," the word "State" was substituted by A.L.O., 1950.

3. The words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

---

because it is not shown that the cattle were kept for an industrial purpose. It cannot be said that a licence is unnecessary unless the cattle are kept for an industrial purpose. 183 I.C. 282=49 L.W. 150=A.I.R. 1939 M. 470. S. 249 has not been repealed by S. 193 of Madras Act XIV of 1920. The Legislature must be deemed to have intended the rights conferred by both those sections to exist together. For one statute to cancel another they must be mutually desstructive. 50 Mad. 845=1927 Mad. 602=52 M.L.J. 653. The words 'likely to be dangerous to human life, health or property' in Schedule V are to be taken as qualifying each one of the previous clauses in (q) and not merely the last. The object seems to be to bring under municipal control by the method of issuing licences the keeping or using of things which are dangerous to human life, health or property. Ordinarily any large machinery is dangerous to human life, but one cannot presume it with reference to any particular machinery. The conversion of paddy into rice is an industrial purpose. 1924 Mad. 375=45 M.L.J. 555. No offence can be said to be committed under S. 249 unless it is proved that working of the mill was dangerous to human health. There is no presumption that all mills are dangerous and the onus to prove that a specific mill is dangerous is upon the prosecution, not upon the defence to prove the contrary. 1931 M.W.N. 517. The applicants were fined under S. 299 (1), of the U.P. Municipalities Act, for infringement of a bye-law of the Notified Area Committee. This bye-law is to the effect that no person may ply the trade of a weighman without obtaining a licence. The facts found are that one X sold some grain to the applicants and that they weighed it themselves without employing a professional weighman and that in consideration of not employing a weighman they demanded and obtained from the vendor the commission which the weighman would have received. Held, that the action of the applicants is not one which contravenes the bye-law as it cannot be said that they were plying the trade of a weighman. 157 I.C. 1091 =1935 A.L.J. 660=1935 All. 655. For selling grain by auction for commission, obtaining licence is necessary. 93 I.C. 701 =49 Mad. 432=1926 M. 722=50 M.L.J. 654. See also 53 M.L.J. 633 (F.B.). A licence to keep a timber depot does not cover the permission required to erect a shed necessary therefor. 54 I.C. 49=38 M.L.J. 84. See also 64 C.L.J. 524 (burning bricks without licence). Where a bye-law made under the powers conferred by S. 298 of the U.P. Municipalities Act stated that no person shall use any place within the Municipal limits for storing 'wood' unless a licence has been granted for it, storing of timber would require a licence. The 'wood' is undoubtedly a generic term which includes timber and when used in a bye-law it is not confined to one variety of it namely firewood or wood used as fuel. All wood may not be timber, but all timber is wood.

for places to be newly opened shall be made not less than thirty days before they are opened.

[(6) Where a licence is granted or renewed under this section for the use of any place outside the municipal limits, the municipal council shall pay to the panchayat, if any, having jurisdiction over such place, or if there is no such panchayat to the district board having such jurisdiction, such portion of the fee received for the grant or renewal of the licence as the

---

The absence of a licence for storing timber is punishable under the rules made under the powers conferred by S. 299 of the Act. 186 I.C. 283=A.I.R. 1940 A. 35. The accused was convicted and sentenced for the offence of storing and selling grain wholesale within the Cannanore municipal limits without the licence of the municipal chairman under Ss. 249 and 338 (b) contrary to notification issued in July, 1920, by a municipal council constituted under the repealed Act of 1884 purporting to act under S. 249 of the new Act V of 1920, some two months before the new Act was put into force. On revision, held, that the notification was not a valid one under the new Act because the council purported to act before the new Act came into force and the notification was therefore invalid and consequently accused was not guilty of the offences under the new Act. 1921 M. 713=42 M.L.J. 149=66 I.C. 429. The fact that the petitioner was in no way prejudiced is immaterial when the question arises in connection with the application of a penal provision as a strict construction of the law is required in such a case. 42 M.L.J, 149. The permission to instal a flour mill granted to the petitioner was suspended by the Collector on 3—6—1929 and the petitioner was charged with having disobeyed that order and run the machinery from 24—6—1929 to 29—10—1929, not only under Ss. 250 and 313 but also under Schedule VIII and for this purpose the offence was split into periods of a day. Held, the charge under Schedule VIII was not sustainable in the absence of a previous conviction under S. 313 before 24—6—1929, that in such case the accused can be convicted in respect of the same machine for the one act of installation only, that the theory of a daily offence was entirely misconceived as also the splitting of a day. The petitioner could only have been charged in one case for the full period within the knowledge of the complaint. 1931 M.W.N. 517. Defendant working flour mill in his house with permission of Municipal Board—Damage to plaintiff—Suit for injunction—Maintainability. 167 I.C. 230=A.I.R. 1937 All. 78; I.L.R. (1939) A. 724=1939 A. 599. Where no order was passed on an application for licence to boil paddy till after the expiry of thirty days fixed by S. 188 (5) of the Act and the accused boiled paddy. Held, no offence was committed as the place must be deemed to have been licensed for the next official year under S. 188 (5). S. 188 (5) should not be read subject to the reference to the refusal of the licence in S. 189. 40 Mad. 589=41 I.C. 655.

Stay of proceedings.—Complaint under Act for omission to obtain licence for working rice mill—Civil suit relating to same question—Power of Court to stay criminal proceedings. See 1929 M.W.N. 172=1929 M. 345. See also 1943 M. 191=55 L.W. 783=(1942) 2 M.L.J. 663 (Levy of fees for trade and industry).

Secs. 249 (1) *and* 313: *Restaurant conducted without licence by tenant—Liability of owner (landlord).*—It is the user without licence of the place concerned as a restaurant that constitutes the offence. The owner of the place who has nothing to do with such user is clearly immune. Ordinarily it is not the landlord or the owner of the place who has to take out a licence for conducting a restaurant. The Act aims at the actual occupier or tenant of the premises who puts the place to the use mentioned in the Act without a licence. (1958) Kerala 872=1958 Cr. L.J. 1397=(1958) K.L.J. 599=1958 K.L.T. 453=1958 Ker. 356=(1958) M.L.J. (Cr.) 623, (following (1946) 2 M.L.J. 348).

Sec. 249 (3): *Validity.*—S. 249 (3) gives the executive authority an absolute power of refusing to grant a licence as also the power of imposing such conditions and restrictions as he might think fit. The vesting of such absolute power cannot be justified under Art. 19 (6) of the Constitution on the ground of reasonable restrictions. Since sub-S. (6) contravenes Art. 19 (6) of the Constitution, it has to be struck down as violating the fundamental right guaranteed by Art. 19 (1) (g). (1955) 2 M.L.J. 684=68 L.W. 823=1956 Mad. 181.

Sec. 249 (3)—*Validity—Infringing fundamental rights—Constitution of India, Art.* 19 (1) (*g*).—Sub-S. (3) of S. 249 of the Madras District Municipalities Act, which confers absolute and arbitrary discretion on the executive authority, namely, the Municipal Health Officer to grant or refuse a licence on his own sweet will and pleasure, violates the fundamental right guaranteed under Art. 19 (1) (g) of the Constitution of India and should be struck down as invalid. (1955) 2 M.L.J. 684; (1952) 1 M.L.J. 514: I.L.R. (1952) Mad. 957 and

***(State)** **Government may, by general or special order, direct.] (Added by Madras Act XXXVIII of 1942, re-enacted permanently with modifications by Madras Act IX of 1948).**

*Substituted by A.L.O., 1950.

(1954) S.C.J. 238: 1954 S.C.R. 803, foll. (1959) M.L.J. (Cr.) 923.

Sec. 249 (5), 321 (11) *and* 511: *Scope—Valid application for renewal of licence—If condition precedent to claim to privilege under S.* 321 (11).—Before a claim to privilege under S. 321 (11) can be claimed there must have been an application for renewal of the licence validly made as contemplated under S. 249 (5), *i.e.,* made not less than thirty days before the end of the year for which the licence had been granted. Otherwise the benefit would not be available by reason of non-receipt of orders on the application for renewal. *See* (1958) 1 And. W.R. 156=(1958) M.L.J. (Cr.) 170.

Sec. 249, *Cl.* (5).—In the case of renewal of a licence, though Cl. (5) of S. 249 of the District Municipalities Act speaks of 30 days, there is no bar to the issue of a licence by reason of the application for renewal not having been made not less than 30 days before the end of the year. The provision ought not to be understood as if it was one of the Articles of the Limitation Act standing in the way of the Chairman granting a licence. 28 L.W. 501=1928 Mad. 1157=55 M.L.J. 495.

Sec. 249: *Notification—Publication—Subsequent amendment—Fresh Publication Necessity.*—Under S. 249, an omnibus publication of the existing purposes at a particular time is not a sufficient compliance with the requirement as to publication. Where the original notification is amended, the amendment also should be published in the official Gazette. (1948) 1 M.L.J. 418=1948 M.W.N. 408=49 Cr. L.J. 709=1948 Mad. 479.

Sec. 249: *Order under—Quashing of—Duty of Municipal Council.*—An order of the executive authority of a Municipal Council refusing to grant a licence on irrelevant grounds is liable to be quashed. The municipal Council which is vested with a Statutory duty to hear and dispose of appeals from the orders of an officer in the matter of grant of licences cannot abdicate its duty to hear and dispose of the appeal on the merits by passing a resolution that it does not like to interfere with the jurisdiction of the officer. (1955) 2 M.L.J. 684=68 L.W. 823=1956 Mad. 181.

Secs. 249 *and* 250.—See also notes under S. 313. Under Cl. (1) of S. 188 a licence ought to be taken out for keeping such places as that indicated in the clause in all cases in which the element of letting out on hire is involved in the use of the place. 36 M.L.J. 27=49 I.C. 348. Permission obtained under S. 250. Necessity for taking out licence under S. 249. See 26 L.W. 893=50 Mad. 467=51 M.L.J. 490. The fact that permission was obtained under S. 250 for the installation of a rice-mill and engine does not absolve the owner of the mill from taking out licence for working the engine under S. 249. 50 M. 467=1926 Mad. 1131=51 M.L.J. 490. (N.B.—1926 Mad. 576=50 M.L.J. 384 is not now good law. See 1927 Mad. 961=53 M.L.J. 363 (F.B.) The object and sense of Ss. 249 and 250 are entirely different. S. 249 contemplates an annual payment for the use of the machinery, while S. 250 a payment once for all for installing it. 1926 Mad. 1131=51 M.L.J. 490. A person who owns and works a rice-mill which is found to be dangerous to human life and health is bound to take out an annual licence under S. 249 in spite of the fact that he has already obtained permission under S. 250 for the construction or establishment of the machinery. The permission under S. 250 of the Act is given solely for the construction, establishment or installation and the section does not deal with the user of the places but deals only with their inception. When the owner wishes to use them. S. 249 becomes applicable. (51 M.L.J. 490, Foll.; 50 M.L.J. 384,Overr.) 51 M. 122=105 I.C. 686=1927 Mad. 961=53 M.L.J. 633. (On appeal from 50 M. 467). Where the plaintiff after unsuccessfully appealing to the Municipal Board against the granting of sanction to the defendant, to set up a flour mill in the adjoining house, files a suit for a perpetual injunction to restrain the defendant from working his mill as it was causing annoyance and damaging his property, it is not barred by Municipal Act. When the Municipal Board grants sanction under the Act it has to consider only the interests of the public and is not concerned with the rights or interests of individuals as such. The upholding of the sanction by the appellate authority may be final so far as it goes. But it will in no way interfere with the plaintiff's right to bring an action on the ground that the mill is being worked in such a way as to cause nuisance or damage to him or his property. Further there is nothing in the Municipal Act which gives jurisdiction to the Municipal Board to adjudicate in matters of controversy between private individuals. 1939 A.L.J. 917=A.I.R. 1939 All. 599=I.L.R. (1939) A. 724.

Secs. 249 *and* 313.—*Licence for hotel.*—Where an application under S. 249 (5) for renewal of licence to keep a hotel is refused by the executive authority of a municipality, but the applicant continues to run the hotel and is prosecuted under S. 313 of the Act for doing so, it is not open to the Magistrate to acquit the accused on the ground

Application to be made for construction, establiishment or installation of factory, work-shop or work-place in which steam or other power is to be employed.

*250. (1) Every person intending

(a) to construct or establish any factory, work-shop or work-place in which it is proposed to employ steam-power, water-power or other mechanical power or electrical power, or

---

LEG. REF.

* Under S. 5-A (1) of the Madras Cinemas Regulation Act (IX of 1955), the provisions of the Madras District Municipalities Act (1920) shall not apply to any application made under that section by any person intending to use any site for constructing building thereon for the exhibition of cinematograph films, or to construct or reconstruct any building for such exhibition, or to instal any machinery in any place where cinematograph exhibitions are proposed to be given.

---

that the order of refusal to renew the licence is not valid. The validity or otherwise of the order of refusal cannot be gone into in such a prosecution. 1941 M.W.N. 1073 (2) =A.I.R. 1942 Mad. 279 (2).

In a prosecution under S. 313 read with S. 249 of the Act for running a sotel without a licence, the accused appeared and stated that he had applied for renewal of his licence and had deposited the licence fee. But as he did not produce a licence, the Magistrate thought that he had no defence and convicted him under Ss. 249 and 313 of the Act, holding that the accused admitted his guilt. Held, that the plea of the accused was mis-understood and the conviction was therefore unsustainable. 198 I.C. 104=43 Cr. L.J. 368=1941 M.W.N. 1074=A.I.R. 1942 Mad. 281 (1).

Sec. 249 *and Sch. V (a).*—Applicability—Gist of offence. The gist of the offence under S. 249 and Sch. V (a) consists in washing soiled clothes and not in keeping them for the purpose of washing them. No licence is required merely for keeping soiled clothes the washing of which is done outside the municipal limits and hence no offence is committed in such a case on the ground of want of licence. (1950) 2 M.L.J. 168=68 L.W. 761=1950 M.W.N. 601=1950 Mad. 784.

S. 249—Scope—Running oil mill after refusal of licence for same—Prosecution—Legality of refusal of licence—If can be pleaded or gone into.—Where a person is prosecuted for carrying on an industry or trade requiring a licence after refusal of a licence therefor, it is no doubt open to the Court to find out whether the order of the statutory body was made without jurisdiction, whether, on the face of it the order is illegal, or whether it is unreasonable, revolting or repugnant to conscience. But where the order is in the legitimate exercise of jurisdiction vested in the statutory body and passed *bona fide* after considering the evidence before it the Court cannot hold it to be wrong even if it is wrong on the merits. The Court cannot substitute its judgment as an appellate authority for that of the statutory body.

Where the party pleads that no licence is necessary, it is one of jurisdiction. But where the plea is that even though a licence is necessary, it has been refused wrongly on the merits, it is not one involving jurisdiction at all. (1949) 1 M.L.J. 488 =62 L.W. 293=50 Cr. L. J. 823=1949 M.W.N. 237=1949 Mad. 547.

Sec. 249, *& Sch. V (j).*—"Place'—Meaning of—Business carried in several contiguous buildings with different door numbers—Single licence—Sufficiency. The effect of S. 249, read with Sch. V (j) is that a person carrying on any business requiring a licence under the Act should take out a licence and pay a prescribed fee. If a scheduled business requiring a licence is carried in the same place consisting of several contiguous buildings, for which different door number have been given, it cannot be said that more than one business are carried in more than one place attaching a separate licence fee for each door number. "Place" connotes a particular point or portion of space specially occupied by or belonging to the thing under consideration. The issue of a licence under the Act relates to the business. If, however, the same business is carried on in several non-contiguous place the position will be different. (1958) 2 M. L.J. 180=71 L.W. 507=(1958) M.L.J. (Cr.) 628.

Sec. 250.—*Applicability.*—Installation of oil engine in field for irrigation—Licence—Necessity—"Premises" meaning of. S. 250 does not apply to the installation and working of oil engines in agricultural fields. No licence is necessary in the case of an installation of an oil engine in a field well for irrigation.

The word "premises" in the Act must be read as meaning a building with land adjacent to it. A building is a necessary criterion. Therefore the installation in an open field would not amount to an installation in "premises". (1953) 2 M.L.J. 490=66 L.

(b) to install in any premises any machinery or manufacturing plant driven by steam, water or other power as aforesaid [1][not being machinery or manufacturing plant exempted by rules]

shall, before beginning such construction, establishment or installation make an application in writing to the municipal council for permission to undertake the intended work.

[2][(2) The application [1][shall specify the maximum number of workers proposed to be employed [3][......] employed [3][on any day] in the factory, workshop work-place or premises and] shall be accompanied by—

(i) a plan of the factory, workshop, work-place or premises prepared in such manner as may be prescribed by rules made in this behalf by the [4][State Government], and

(ii) such particulars as to the power, machinery plant or premises as the municipal council may require by by-laws made in this behalf.]

(3) The municipal council shall, as soon as may be after the receipt of the application—

(a) grant the permission applied for, either absolutely or subject to such conditions as it thinks fit to impose or

(b) refuse permission, if it is of opinion that such construction, establishment or installation is objectionable by reason of the density of the population in the neighbourhood or that it is likely to cause a nuisance.

[5][(4) Before granting permission under sub-section (3), the municipal council—

(a) shall [1][if more than nine workers are proposed to be [3][.......] employed [3][on any day] in the factory, workshop, work-place or premises] obtain the approval of the inspector of factories appointed under the [6][Indian

---

LEG. REF.

1. Inserted by Madras Act XXXVIII of 1942.

2. This sub-section was substituted for the original by S. 106 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. The word 'Simultaneously' omitted by Madras Act IX of 1948 and for the words 'at any time' the words 'on any day' substituted by Madras Act IX of 1948.

4. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word "Provincial", the "State' was substituted by A.L.O., 1950.

5. This sub-section was substituted for the original by S. 106 (ii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

6. See now the Factories Act, 1948, (Central Act (LXIII of 1948)).

W. 824=1954 Cr.L.J. 329=1954 Mad. 285.

Sec. 250—Scope—If in consistent with S. 52 (2), Madras Public Health Act. See (1958) M.L.J. (Cr.) 470.

Sec. 250 (1) (*b*).—Applicability—Chemist and druggist shop—Keeping frigidaire—Permission—Necessity.

Sec. 250 (1) (b).—Only applies to installations in premises for the purpose of industries and factories. A chemist and druggist shop run in a premises would not constitute "premises for the purpose of industries and factories." Hence the person keeping or running the chemist and druggist shop is not bound to obtain a licence or permission under the section for keeping a frigidaire in the shop. (1957) Mad. 1160=(1957) 2 M.L.J. 37=70 L.W. 598=(1957) M.L. J. (Cr.) 279.

Sec. 250 (1): "*Construction*"—Meaning of. 1926 Mad. 576=50 M.L.J. 384. S. 250 only applies where a person intends for the first time to construct or establish any factory, workshop or work place. It cannot apply to a case where, without changing the machinery, the shed in which it is kept is rebuilt when the prior one was burnt down. 17 L.W. 249=72 I.C. 613 (2)=1923 Mad. 375 (1). A bullock cart with pneumatic rubber tyres composed largely of iron, but which has also wooden planks in it does not fall under the vague heading of 'manufacture' and is not liable to octroi duty, and statutes imposing pecuniary burden must be strictly construed and failure to make payment of octroi duty in respect of such a cart is not an offence under R. 47 of the

Factories Act, 1911] having jurisdiction in the area of the municipality or if there is more than one such inspector, of the inspector designated by the [1][State Government] in this behalf by general or special order, as regards the plan of the factory, workshop, work-place or premises with reference to—

(i) the adequacy of the provision for ventilation and light,

(ii) the sufficiency of the height and dimensions of the rooms and doors,

(iii) the suitability of the exits to be used in case of fire, and

(iv) such other matters as may be prescribed by rules made by the [1][State Government], and

(b) shall consult and have due regard to the opinion of the municipal health officer where the municipal council employs such an officer and of the [2][district health officer] in other cases, as regards the suitability of the site of the factory, workshop, work-place or premises for the purpose specified in the application.]

[(5) More than nine workers shall not be [3][. . . . . .] employed [3][on any day] in any factory, workshop, work-place or premises, unless the permission granted in respect thereof under sub-section (3) authorizes such employment, or unless fresh permission authorizing such employment has been obtained from the municipal council. Before granting such fresh permission, the council shall obtain the approval of the Inspector of Factories referred to in clause (a) of sub-section (4) as regards the plan of the factory, workshop, work-place or premises, with reference to the matters specified in that clause.

(6) The grant of permission under this section—

(a) shall in regard to the replacement of machinery, the levy of fees; the conditions to be observed and the like, be subject to such restrictions and control as may be prescribed; and

(b) shall not be deemed to dispense with the necessity for compliance with the provisions of sections 197 and 199 or sections 208 and 209, as the case may be.

Explanation.—The word "worker" in sub-sections (2), (4) and (5) shall, in relation to any factory, workshop, work-place or premises have the same meaning as in the Factories Act, 1934.]† (Substituted by Madras Act XXXVIII of 1942).

LEG. REF.

1. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937 and for the word "Provincial" the word State was substituted by A.L.O., 1950.

2. Inserted and substituted by Madras Act XXXVIII of 1942.

3. Vide footnote (3) at p. 174.

†See now the Factories Act, 1948 (Central Act LXII of 1948).

rules read with S. 178 (5) of the Municipal Act. A.I.R. 1937 Nag. 11. *See also* (1936) M.W.N. 753 (Grant of licence to cinema proprietor for use of engine of 24 Horse power—Smaller power engine can be used).

Secs. 250 (1) (b), 313 *and* 321—Applicability—Absence of refusal on application—Bare direction not to commence work till grant of permission—Contravention of—Offence.

The accused applied for permission to instal additional machinery operated by electric power, but no order of refusal was communicated to him. The only communication received by him from the Commissioner was to the effect that he was not to commence work till permission was granted. There was no evidence of any resolution having been passed by the Municipal Council in accordance with the tenor of the direction of the Commissioner. Held, that in the absence of any communication of a refusal within 30 days, S. 321 (11) came into operation and permission must be deemed to have been given. No offence was therefore committed under S. 250 (1) (b) read with 313 (c) by reason of the accused having

Council may issue directions for abatement of nuisance caused by steam or other power.

251. (1) If, in any factory workshop or work-place in which steam-power, water-power or other mechanicol power or electrical power is used, nuisance is in the opinion of the municipal council caused by reason of the particular kind of fuel employed or by reason of the noise or vibration created, the municipal council may issue such directions as it thinks fit, for the abatement of the nuisance within a reasonable time to be specified for the purpose.

(2) If there has been wilful default in carrying out such directions or if abatement is found impracticable, the municipal council may

(a) prohibit the use of the particular kind of fuel employed, or

(b) restrict the notice or vibration by prohibiting the working of the factory, workshop or work-place between the hours of 9-30 P.M. and 5-30 A.M.

Power of the [State Government] to pass orders or give directions to municipal councils.

252. The [1][State Government] may, either generally or in any particular case, make such order or give such directions as [2][they may deem fit] in respect of any action taken [3][or omitted to be taken] [4][. . .] under section 250 or section 251.

The executive authority, may enter any factory, workshop or work-place.

253. (1) The [5][executive authority] or any person authorized by him in this behalf may enter any factory, workshop or work place—

(a) at any time between sunrise and sunset;

(b) at any time when any industry is being carried on and

(c) at any time by day or by night, if he has reason to believe that any offence is being committed under section 250 or section 251.

(2) No claim shall lie against any person for any damage or inconvenience necessarily caused by the exercise of powers under this section or by the use of any force necessary for the purpose of effecting an entrance under this section.

Slaughtering.

Provision of municipal slaughter-houses.

254. (1) The municipal council shall provide a sufficient number of places for use as municipal slaughter-houses and may charge rents and fees for their use [6][at such rates as it may think fit.]

LEG. REF.

1. Vide footnote (1) at p. 175.

2. These words were substituted for the words 'he may deem fit' by the Schedule to the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. These words were inserted by S. 107 (i), ibid.

4. The words 'by the municipal council' were omitted by S. 107 (ii), ibid.

5. These words were substituted for the words 'Chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

6. Added by Madras Act XXXVIII of 1942.

installed the additional machinery. (1957) 2 M.L.J. 637=(1958) Mad. 330=70 L.W. 1019=(1957) M.L.J. (Cr.) 872.

Secs. 254 *and* 255.—A municipal council has no power to farm out the right to collect slaughtering fees. A lease of such a right is void under Ss. 11 and 23 of the Contract Act. 36 M. 113=21 M.L.J. 790 =11 I.C. 669. The Act does not expressly or impliedly authorize the leasing or farming out of the right to collect slaughtering fees. Therefore, the framing out of the right to collect slaughtering fees is unauthorized by law and ultra vires. (21 M.L.J. 788, F.) A contract by which such fees are framed out is opposed to the provisions of Ss. 11 and 23, Contract Act and is also ab initio void. 21 M.L.J. 790 =36 M. 113. There is no obligation on a

[1][(2) The council may—

(a) place the collection of such rents and fees under the management of such persons as may appear to it proper; or

(b) farm out such collection for any period not exceeding three years at a time and on such terms and conditions as it may think fit.]

(3) Municipal slaughter houses may be situated within; or with the sanction of the [2][State Government], without the municipality.

Licence for slaughter-houses.

255. (1) The owner of any place [3][within municipal limits or at a distance within three miles of such limits] which is used as a slaughter-house for the slaughtering of animals or for the skinning or cutting up of any carcasses, [4][. . .] [1][shall apply to the executive authority for a licence not less than thirty and not more than ninety days before the opening of such place as a slaughter-house or the commencement of the year for which the licence is sought to be renewed, as the case may be.]

[5][Provided that this sub section shall not take effect in any area outside the municipal limits except with the previous sanction of the [2](State Government)].

(2) The [6][executive authority] may, by an order and subject to such

LEG. REF.

1. Substituted by Mad. Act XXXVIII of 1942.

2. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word "Provincial," the word "State" was substituted by A.L. O., 1950.

3. These words were substituted for the words 'in the municipality' by S. 108 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

4. The words 'or any place within three miles of the municipal limits which is used as a slaughter-house for the slaughtering of animals intended for food to be consumed within the municipality' were omitted by S. 108 (i) ibid.

5. This proviso was added by S. 108 (ii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

6. These words were substituted for the words 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras AAct XV of 1933).

---

person to take out a special licence to enable him to slaughter animals in a public slaughter-house. The very act of providing him a place for being used as public slaughter-house is a licence to the public to use it as su h subject to the payment of the prescribed fee. 2 M.L.J. 206. The property in a public market, the right of possession as owner and its regulation and control, are for the purposes of the Act vested in the municipal council. 2 M.L.J. 206.

Sec. 254.—Suit against a municipality for damages for breach of a contract stated to have been entered into with the plaintiff, by which the defendant, the municipal council, under took to secure to the plaintiff the monopoly of selling flesh within the municipal limits. The suit was dismissed by the lower appellate Court on the ground, among others, that the alleged agreement was void as one intended to create a monopoly. Held that under the English Common Law as well as under S. 23 of the Contract Act, an agreement having, for its object, the creation of monopolies is void, as opposed to public policy. 28 M. 520. S. 411 of the City of Bombay Municipal Act, in terms, deprives every citizen living within the city or to whom the Act applies, of the power to carry on the business of a butcher, and the only exception is the grant of a licence by the Municipal Commissioner and carrying on the trade of a butcher in conformity with the terms of that licence. The Commissioner has power under that section either to grant a licence or refuse to grant or to refuse to renew a licence for carrying on the business of a butcher within the city. So long as the Commissioner exercises his power in a proper manner, i.e., not arbitrarily or for an ulterior motive, and the discretion is exercised for the proper Municipal administration in accordance with the considered policy of the Municipality, the High Court will not be justified in interfering with the exercise of that discretion under S. 45 of the Specific Relief Act. I.L.R. (1937) B. 774=171 I.C. 331=39 Bom. L.R. 536=A.I.R. 1937 Bom. 395.

Sec. 255.—In the matter of the grant of licences under S. 191, Cl. (2) of the Act of

restrictions and regulations as to supervision and inspection, as he thinks fit grant or refuse to grant such licence.

Slaughter of animals during festivals and ceremonies.

256. The [1][executive authority] may allow any animal to be slaughtered in such places as he thinks fit on occasions of festivals and ceremonies or as a special measure.

Slaughter of animals for sale as food.

257. No person shall slaughter within the municipality, except in a public or licensed slaughter-house, any cattle, horse, sheep, goat, or pig for sale as food or skin or cut up any carcass without or otherwise than in conformity with a licence from the [1][executive authority] or dry or permit to be dried any skin in such a manner as to cause a nuisance:

Provided that the [1][executive authority] may authorize any person to slaughter, without licence and without the payment of any fee, any animal for the purpose of a religious ceremony.

The milk trade.

Regulation of milk trade.

258. (1) No person shall without or otherwise than in conformity with a licence from the [1][executive authority]—

(a) carry on within the municipality the trade or business of a dealer in or importer or seller or hawker or milk or dairy-produce;

(b) use any place in the municipality for the sale of milk or dairy-produce:

Provided that no such licence shall be given to any person who is suffering from a dangerous disease.

(2) Such licence may be refused or may be granted on such conditions as the [1][executive authority] may deem necessary which may extend to the construction, ventilation, conservancy, supervision and inspection of the premises, whether within or without municipal limits, where the animals from which the milk-supply is derived are kept.

Markets, butchers, fishmongers, hawkers.

259. All markets which are [2][acquired], constructed, repaired or main-

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. This words was inserted by S. 109 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X 1930).

1884 the decision as to the propriety of granting or withholding the licence must be made, in each case, with reference to its particular circumstances, and it would be ultra vires and in direct violation of duty to enter into agreements with a particular person or persons to the effect that no application in the matter would be entertained or considered except from such particular person or persons. 28 M. 520. The power of municipalities in the matter of construing powers relating to municipal Acts is to be strictly construed within the limits of the enactments creating them and the language of such enactments creating them is not to be stretched to cover attempts made, under colour of such legislative provisions, to interfere, in any way with the exercise of the ordinary rights of citizens. The existence of any powers in the municipality to act in interference of the ordinary rights of citizens always depends upon the grant of such powers by the enactment, either expressly or by necessary implication incident to other powers expressly granted thereby or indispensable to the object and the purpose for which the municipality was created. Doubts as to the existence of such powers must be resolved against the Corporation and in favour of the public. 28 M. 520. On this section see also 1937 Lah. 310.

Sec. 258.—In a prosecution for adulteration of ghee, it is not safe to rely on technical treatises alone without the aid of an expert. 22 C.W.N. 745=19 Cr.L.

Public markets.

tained out of the municipal fund shall be deemed to be public markets [1][; and such markets shall be open to persons of whatever caste or creed].

Powers in nrespect of public markets.

260. (1) The council may provide places for use as public markets.

[2][(2) The council may in any public market levy any one or more of the following fees at such rates and may place the collection of such fees under the management of such persons as may appear to it proper or may farm out such fees [2-a][for any period not exceeding three years at a time, and] on such terms and subject to such conditions as it may deem fit:—

(a) fees for the use of, or for the right to expose goods for sale in such markets:

(b) fees for the use of shops, stalls, pens or stands in such markets,

(c) fees on vehicles or pack-animals carrying, or on persons bringing, goods for sale in such markets;

(d) fees on animals brought for sale into, or sold in, such markets; and

(e) licence fees on brokers, commission agents, weighmen and measurers practising there in such markets.]

(3) The council may, with the sanction of the [3][State Government], close any public market or part thereof.

Control of the executive authority over public markets.

261. (1) No person shall, without the permission of [4][the executive authority], or if the [5][fees] have been farmed out of the farmer sell or expose for sale any animal or article within any public market.

(2) The [4][executive authority] may expel from any public market any person who or whose servant has been convicted of disobeying any by-laws at the time in force in such market and may prevent such person from further carrying on by himself or his servants or agents any trade or business in such market, or occupying any shop, stall or other place therein and may determine any lease or tenure which such person may possess in any such shop, stall, or place.

Licence for private market.

[6][262. (1) No person shall open a new private market or continue to keep open a private market unless he obtains from the council a licence to do so.

LEG. REF.

1. A semi-colon was substituted for the full stop at the end of the original section and these words were added by S. 4 of the Madras District Municipalities (Amendment) Act, 1929 (Madras Act XVII of 1929).

2. This sub-section was substituted for the original by S. 110 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2-a. Inserted by Madraas Act XXXVIII of 1942.

3. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word "Provincial" the word "State" was substituted by A.L.O., 1950.

4. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendmen) Act, 1933 (Madras Act XV of 1933).

5. This word was substituted for the words 'rents and fees' by S. 111 of the Madras District Municipalities (Amendment) Act 1930 (Madras Act X of 1930).

6. This section was substituted for the original by S. 112 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

J. 753=28 C.L.J. 32=46 I.C. 593. The provisions of the Municipal Act relating to the destruction of noxious food do not appear to contemplate judicial proceedings, but merely executive action, and its object appears to be not the punishment of the person in possession of the noxious food

(2) Application for such licence shall be made by the owner of the

but prevention of its sale to the public. See 1934 Pat. 113. Exposure of food unfit for human consumption for sale is an offence under the Act; 1934 Pat. 113. S. 285, U.P. Municipal Act, merely authorizes the 'inspection and examination' and not the seizure of such articles of food or drink as may be found in a shop which the Commissioners enter. There is no power under that section to seize any of the articles. Under S. 286 only the Commissioner is entitled to seize the same and produce it before a Magistrate. Hence a Sanitary Inspector is not a person authorized to seize articles of food which are unfit for human consumption. He can apply for a warrant under S. 287. As the Sanitary Inspector is not authorized to seize, the owners of the shop is within his rights in declining to allow the articles to be taken from his shop. 154 I.C. 187=1935 Pat. 73. See also 59 Cal. 234 =36 C.W.N. 134=1932 Cal. 462.

Sec. 259.—As to the power of the corporation to define the limits of a bazar, see 36 C.W.N. 1085=1933 C. 322. The premises in question was known as Jamahata, where on every Wednesday, a hat was held for the sale of ready made clothes. The sellers assembled only one day in the week and had no sort of right of occupying any particular place for the sale of their commodities. They paid tolls to the plaintiffs. Held, that the premises constituted a 'bazar'. 36 C.W.N. 1085=1933 C. 322. Notice to remove slaughter-house—Disobedience of—When offence. 22 P. R. 1889 (Cr.) See also 1 P.R. 1906 (Cr.).

Secs. 259 *and* 260.—S. 194 (of the old Act) is an enabling section and does not operate to take away any right which a municipality has as owner of a public market. A valid lease or tenure granted by a municipality may be determined by it in the event of there being a breach of a bye-law. An order by a municipality to a stall-holder to vacate a stall let for purposes of sale in a public market amounts to a direction not to sell from the date on which the stall is required to be vacated. 2 M.L.J. 206.

Sec. 260 (2).—*Property tax in respect of markets—Basis of levy—Gross income from the market—If could be the basis.*—Having regard to the nature of the fees that are generally collected in a market, it cannot be said that all of them constituted income from the property as such. Hence the levy of property tax by a Municipality in respect of a market on the basis of the gross income is not corrected as that income would include not only the rent for the use of the property but also other payments made or fees received by the owner of the market. Fees levied in a market which are not in the nature of rent but which could by virtue of S. 260 (2) of the District Municipalities Act and the notifications issued thereunder be levied and collected by the owner, could not properly form part of any basis for assessment for purposes of property tax for the market. Where an assessment of tax includes an item which could not properly be included the whole assessment would be invalid, unless the part which is invalid is severable from the rest. (1959) 2 M.L.J. 92.

Sec. 260 (2) (b).—*Stall-holder—Position of—If lessee or licence—Enhancement of fee by municipality—If barred by Rent Control Act.*—A persno who occupies a site or stall in a public market is liable to pay a market toll or fee and is merely a licence who is allowed to occupy a small portion of the market for the sale of his goods. He has no interest in the land or building which he is allowed to occupy and there is no transfer of any interest in his favour by way of lease. The dues or fees are payable by reason of the provision of space in the public market where the occupant is allowed to trade and by reason of Ss. 259 and 260. The payment made by the trader is a "fee" for the use of the shop under S. 260 (2) (b) and not rent and the trader is a mere "licensee" and not a lessee. The municipality is entitled to raise the fee and the Madras Buildings (Lease and Rent Control) Act does not operate as a bar to such raising or enhancement I.L.R. (1956) Andhra 515.

Sec. 262. "*Market*".—*Licence fee for private market.*—The term "market" is not defined in the Act and has to be given its ordinary meaning. It connotes a place where the public would go at a particular time for the purchase or sale of articles and a place where articles are sold and made available to the public. See (1956) 2 M.L.J. 563. In this case certain land belonging to a temple was being used as a private market. It was enclosed and consisted of shops and stalls where different kinds of articles including articles of food were sold to the public. Rent was being collected for the shopkeepers. Some of the shops though contiguous, had access from the road side. Excepting the portion occupied by these shops the temple was paying licence fee for the rest of land. It was held that the fact that the opening or shutting of these shops could be done without any reference to the opening or closing of the main gate of the market was not sufficient to exclude the portion occupied by the shops from the scope of the market when the entire property belonged to the same owner and had been used as market for the purpose of purchase and sale of articles to the public. The portion occupied by the shops did not cease to be part of the market merely for the reason that the shopkeepers could have exit and

place in respect of which the licence is sought [1][not less than thirty and not more than ninety days before such place is opened as a market or the commencement of the year for which the licence is sought to be renewed] as the case may be.

(3) The council shall as regards private markets already lawfully established and may, at its discretion, as regards new private markets, grant the licence applied for, subject to such regulations as to supervision and inspection and to such conditions as to sanitation, drainage, water supply, width of paths and ways, weights and measures to be used, and rents and fees to be charged in such market as the council may think proper; or the council may refuse to grant any such licence for any new private market. The council may, however, at any time, for breach of the conditions thereof, suspend or cancel any licence which has been granted under this section. The council may also modify the conditions of the licence to take effect from a specified date.

(4) When a licence is granted, refused, suspended, cancelled or modified under this section the council shall cause a notice of such grant, refusal, suspension, cancellation or modification in English and in *[a regional language] of the district to be posted in some conspicuous place at or near the entrance to the place in respect of which the licence was sought or had been obtained.

(5) Every licence granted under this section shall expire at the end of the year.]

Fee for licence.

[2][262-A. When a licence granted under section 262 permits the levy of any fees of the nature specified in sub-section (2) of section 260 a fee not exceeding fifteen percentum of the gross income of the owner from the market in the preceding year shall be charged by the municipal council for such licence.]

Sale in unlicensed private markets.

263. It shall not be lawful for any person to sell or expose for sale any animal or article in any unlicensed private market.

LEG. REF.

1. Substituted by Madras Act XXXVIII of 1942.

*These words were substituted for the words "a vernacular language" by Madras Act XXXVI of 1955.

2. This section was inserted by S. 113 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

---

entrance without entering through the main gate of the market.

Sec. 262-A—*Object and scope of—Alteration in law—Licence fee—Levy—Limit to amount chargeable*—So 262-A was inserted in the Madras District Municipalities Act by the amending Act of 1930, with the object of putting an end to constant litigation with regard to fees charged by Municipal authorities in respect of licences for private markets. It has altered the law as to the limits within which a Municipal authority can levy such fees by rendering the judgment of the Privy Council in 58 I.A. 313, inoperative in a case governed by the Act. The Municipal authority is not compelled to charge the maximum of 15 per cent. of the gross income of the previous year provided for in the section. It may base its licence fee on a smaller percentage. The option is with the Municipal authority, and the imposition of a fee by such authority within the percentage allowed by the Act cannot be said to be in excess of its powers. The retrospective imposition of an enhanced fee is not unlawful inasmuch as the section itself makes it clear that the licence fee cannot be fixed until the year has advanced. The fee is based on the gross income of the previous year which cannot be ascertained and decided until some date after the commencement of the financial year, and perforce the exaction must be retrospective. 215 I.C. 17=I.L.R. (1944) Mad. 405=1943 M.W.N. 678=56 L.W. 655=A.I.R. 1944 Mad. 85=(1943) 2 M. L.J. 496.

Sec. 263.—For the regulation of meat-trade there are special bye-laws which can-

264. The council may by notice require the owner, occupier, or farmer of any private market to—

Powers of council in respect of private markets.

(a) construct approaches, entrances, passages, gates, drains and cess-pits for such market and provide it with latrines of such description and in such position and number as the council may think fit,

(b) roof and pave the whole or any portion of it or pave any portion of the floor with such material as will in the opinion of the council secure imperviousness and ready cleansing;

(c) ventilate it properly and provide it with a supply of water;

(d) provide passages of sufficient width between the stalls and make such alterations in the stalls, passages, shops, doors or other parts of the market as the council may direct, and

(e) keep it in a cleanly and proper state and remove all filth and refuse therefrom.

Suspension or refusal of licence in default.

265. (1) If any person after notice given to him in that behalf by the council fails within the period and in the manner laid down in the said notice to carry out any of the works specified in section 264 the council may suspend the licence of the said person, or may refuse to grant him a licence, until such works have been completed.

(2) It shall not be lawful for any person to open or keep open any such market after such suspension or refusal.

Prohibition against nuisances in private markets.

266. No owner, occupier, agent or manager in charge of any private market, or of any shop, stall, shed or other place therein shall keep the same so that it is a nuisance or fail to cause anything that is a nuisance to be at once removed to a place to be [1][specified] by the council.

Power to close private markets.

267. The council or any officer duly authorized by it in that behalf may close any private market in respect of which no licence has been applied for or [2][. . .] the licence for which has been refused, withheld or suspended [3][or which is held or kept open contrary to the provisions of this Act].

[4][267-A. (1) A municipal council may acquire the rights of any

LEG. REF.

1. Substituted by Madras Act XVIII of 1944.

2. The words 'any private market' were omitted by S. 114 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. These words were added by S. 114, ibid.

4. This section was inserted by S. 115, ibid.

---

not be made applicable to areas outside the Municipal limits. It is, of course, open to the Municipal Board to approach the Local Government for the extension of the limits of the Board. Without such extension there seems to be no provision in the Act under which a bye-law under it can be made applicable outside Municipal limits. Nor has the Board authority to demand licence-fee or insist on payment of license-fee before business is carried on. 158 I.C. 919=36 Cr. L.J. 1481=1935 All. 903.

Sec. 267-A.—Scope and effect—Owner of private market—Right to prevent Municipality from opening new market.—The owner of a private market in a Municipality is not entitled to prevent the Municipality from opening a new market. S. 267-A does not impliedly give such a right. All that section says is that it is open to the Municipal Council to acquire the rights of any person to hold a private market. That does not confer any right on the owner of a

Acquisition of rights of private persons to hold private markets.

person to hold a private market in any place and to levy fees therein. The acquisition shall be made under the Land Acquisition Act, 1894, and such rights shall be deemed to be land for the purposes of that Act.

(2) On payment by the municipal council of the compensation awarded under the said Act in respect of such property and any other charges incurred in acquiring it, the rights of such person to hold a private market and to levy fees therein shall vest in the municipal council.]

Duty of expelling lepers, etc., from markets and power to expel disturbers.

268. The person in charge of a market shall prevent the entry therein or expel therefrom any person suffering from leprosy in whom the process of ulceration has commenced or from any infectious or contagious disease who sells or exposes for sale therein any article or who not having purchased the same, handles any articles exposed for sale therein, and he may expel therefrom any person who is creating a disturbance therein.

Butcher's, fishmonger's and poulterer's licence.

269. (1) No person shall without or otherwise than in conformity with a licence from the [1][executive authority] carry on the trade of a butcher, fishmonger or poulterer, or use any place for the sale of flesh or fish intended for human food in any place within municipal limits or at a distance within three miles of such limits:

Provided that no licence shall be required for a place used for the selling or storing for sale of preserved flesh or fish contained in airtight and hermetically sealed receptasles:

[2][Provided further that no licence shall be required for any place included in a public market as defined in section 167 of the Madras Local Boards Act, 1920.]

(2) The [1][executive authority] may, by an order and subject to such restrictions as to supervision and inspection as he thinks fit, grant or refuse to grant such licence.

(3) Every such licence shall expire at the end of the year in which it is granted unless for special reasons the [1][executive authority] considers it should expire at an earlier date, when it shall expire at such earlier date as may be specified therein.

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act 1933 (Madras Act XV of 1933).

2. This proviso was added by S. 116 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

---

private market to compel the Municipality to acquire his right and not to open a new market. There is no such thing as a market franchise or a right to hold a market conferred by grant from the Crown in Madras. The English common law rule, that the owner of a private market can prevent another market being opened within a radius of 62 miles, is an artificial rule and is not countenanced even in England as a sound one. It is not a rule based on any equity or good conscience which would compell Courts in India to adopt it. 1941 M.W.N. 792=54 L.W. 728=A.I.R. 1941 Mad. 834 (1)=(1941) 2 M.L.J. 347.

Sec. 269.—Who can grant licence. See (1936) M.W.N. 240. As to the effect of delay in granting licence, see (1954) 2 M.L.J. 217. Cited under S. 321, infra.

Power to prohibit or regulate sale of articles in public-streets.

270. The [1][executive authority] may, with the sanction of the council, prohibit by public notice or licence, or regulate the sale or exposure for sale, of any [2][animals or] articles in or any public street or part thereof.

Decision of disutes as to whether places are markets.

[3][270-A. If any question arises whether any place where persons assemble for the sale or purchase of articles of food or clothing, of livestock or poultry, of cotton, groundnut or other industrial crops or of any other raw or manufactured products is a market or not the municipal council shall make a reference to the [4][State Government] and the decision of the [4][State Government] on the question shall be final.]

[5][**Cart-stands.**]

Provision of public cart-stands, etc.

[5][270-B. (1) The municipal council may construct or provide [6][and maintain] public landing places, halting places and cart-stands and may levy fees for the use of the same.

[6][(1-A) The council may—

(a) place the collection of any such fees under the management of such persons as may appear to it proper; or

(b) farm out the collection of any such fees for any period not exceeding three years at a time and on such terms and conditions as it may think fit.

(1-B) Any agreement entered into by a municipal council, farming out the collection of such fees for a period, not exceeding three years, commencing on or after the 1st April, 1941, shall be valid, notwithstanding that such agreement was entered into before the commencement of the Madras

LEG. REF.

1. See footnote 1, p. 183.
2. These words were inserted by 117 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).
3. This section was inserted by S. 118 ibid.
4. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937 and for the word "Provincial" the word "State" was substituted by A.L.O., 1950.
5. This heading and section 27-B to 270-E were inserted by S. 118 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).
6. Inserted by Madras Act XII of 1941.

Sec. 270: Levy under—Fee or tax.—A tax imposed under S. 270 on persons selling or displaying for sale any article on the margin of any public road is only a "fee" and not "tax." The amount is levied for the purpose of regulating the sale or exposure for sale of articles in or on any public street, and hence it is a fee and not a tax; and it must have some relation to the services rendered by the municipality to regulate the sales. (1956) An. W. R. 616=1956 An. L.T 605

Sec. 270—Licence fee for use of road by vehicles conveying goods for sale—Levy of —Legality.—S. 270 does not authorise a municipality to levy a fee for the use of the road or a levy of a fee on vehicles which carry goods for sale. What the section authorises is only to licence the sale or exposure for sale in or on any public street or part thereof. Conveyance of goods for sale cannot amount to sale or exposure for sale within the meaning of S. 270. The municipality has no power to prescribe any licence fee or to collect it or to farm it out. (1957) 2 M.L.J. 386=70 L.W. 765=1957 K.L.T. 910=(1957) M.L.J. (Cr.) 611. Cart-stand includes stand for carriages and it includes motor buses also. 1935 M.W.N. 955.

Sec. 270-B—Cart stand—Test of.—The expression "cart-stand" has not been defined by the Act. What makes the place a cart-stand is the willingness of the owner of the place to let the vehicles of others besides himself to use the place, to let the vehicles of others stand there, whether on payment of fees or for other consideration. The test is the same both in the case of a private cart-stand and a public cart-stand. Exclusive use of the place by its owner for his own vehicles would be inconsistent with the concept of a cart-stand whether the place is owned by the municipality or is privately owned. It is the use of the place that is the

District Municipalities and Local Boards (Amendment) Act, 1941.] (Inserted by Madras Act XII of 1941.)

(2) A statement in English and a vernacular language of the district of the fees fixed by the council for the use of such place shall be put up in a conspicuous part thereof.

Explanation.—A cart-stand shall for the purposes of this Act, include a stand for carriages [1][including motor vehicles within the meaning of the Indian Motor Vehicles Act, 1914]* and animals.

Prohibition of use of public place or sides of public street as cart-stand, etc.

[2][270-C. Where a municipal council has provided a public landing place, halting place or cart-stand, the [3][executive authority] may prohibit the use for the same purpose by any person within such distance thereof, as may be determined by the municipal council, of any public place or the sides of any public street.]

LEG. REF.

1. These words were inserted by Schedule I to the Madras Motor Vehicles Taxation Act, 1931 (Madras Act III of 1931).

*See now the Motor Vehicle Act (IV of 1939).

2. Vide footnote 1, page 186.
3. Vide footnote 1 on page 183.

---

decisive factor. (1957) 2 M.L.J. 443=(1957) Mad. 1032=1957 Mad. 781.

Cart-stand—Private and public—Distinction.—The distinction between "public" and "private" cart-stands is obviously based on the ownership of the cart-stand, but that will not, by itself, decide the question what is a cart-stand. In the case of public cart-stand, at any rate, it is clearly the availability of the place for use by members of the public, who own or are in charge of vehicles for keeping their vehicles for a time—the duration of stay is immaterial—to let the vehicles stand there, that makes the place a cart-stand. If the owner of the place uses that place only for his own vehicles to the exclusion of every one else that excludes the possibility of treating the place as even a private cart-stand within the meaning of S. 270-E, the further use of the vehicle by its owner, even for the purposes of his business, such as allowing the passengers to get into the stationary bus or to alight from it on the premises would not make the place a cart-stand (22 Mad. 455 Followed. (1938) 1 M.L.J. 485=1938 Mad. 535, dissented). (1957) Mad. 1032=1957 Mad. 781=(1957) 2 M.L.J. 443.

Sec. 270-B.—It is quite an untenable proposition that a person cannot be said to use a cart-stand or car park because he is compelled to use a certain place for that purpose and not allowed to park his cart or car where he pleases. A parking place for motor buses and shed with waiting rooms and other conveniences provided by a Municipality are not merely intended for the convenience of the buses but also for the convenience of passengers, and if, in order to pick up passengers, a bus has to go to and stand in a certain place, it clearly 'uses' that place within the meaning of S. 270-B of the District Municipalities Act for the purposes of its business, viz., the transportation of passengers. There is no question of voluntary or involuntary use of the parking space. If the owner wishes to ply his bus for hire he has to conform to the rules made in that behalf under the Motor Vehicles Act. He is therefore liable to pay the fees prescribed by a Municipality for the use of the parking place or shed. And a contractor to whom the right to collect the fees has been farmed can be directed and has power, to seize a bus under S. 270-D of the Act for arrears of fees, which have not been paid by the owner. The fact that a Municipality does not itself seize the bus but directs the contractor to seize it does not render the seizure illegal or invalid. A.I.R. 1943 Mad. 122=(1942) 2 M.L.J. 472:

Ss. 270-B. 270-C and 270-E—Scope. See 1953 S.C.J. 31=(1953) 1 M. L. J. 205=1953 S.C. 79.

Sec. 270-B. (1)—*Levy of fees for cart-stand—Justification—Services to be rendered.*—Conservancyy and maintenance of drain are the services to which in the normal course an owner of the premises as a rate-payer of the municipality would be entitled. Where there is really nothing to show that the use of the premises as a bus-stand for his own buses required extra service over and above those he was entitled to as a person paying the prescribed property-tax, etc., taxes to the municipality, these two items would have to be excluded in deciding whether the licence fee demanded by the municipality under S. 270-B (1) bore a just and reasonable relation to the services the municipality had to render in return. (1957) 2 M.L.J. 443=(1957) Mad. 1032; 1957 Mad. 781.

Sec. 270-C and 270-E.—Applicability—Running a lorry stand—What amounts to

[1][270-D. (1) If the fee leviable under sub-section (1) of section 270-B in respect of a vehicle or animal is not paid on demand, the person appointed to collect such fee may seize and detain such portion of the appurtenances or load of such vehicle or animal as will, in his opinion, suffice to defray the amount due, in the absence of any such appurtenances or load or in the event of this value being insufficient to [2][defray the amount] due, he may seize and detain the vehicle or animal.

Recovery of cart-stand fees, etc.

(2) All property seized under sub-section (1) shall be sent within twenty-four hours to the [3][executive authority] or to such person as he may, have authorized to receive and sell such property and the [3][executive authority] shall forthwith give notice to the proprietor of the property seized, or if the proprietor is not known, or is not resident within the municipality to the person who was in charge of the said property at the time when it was seized, or, if such person cannot be found, publish by beat of drum, that after the expiry of two days, exclusive of Sunday, from the date of service or publication of such notice, the property will be sold by auction at a place to be specified in the notice.

(3) If, at any time before the sale has begun, the amount due on account of the fee, together with a sum of four annas on account of charges incurred in connexion with the seizure and detention, is tendered to the [3][executive authority] or other person authorized as aforesaid, the property seized shall be forthwith released.

(4) If no such tender is made, the property may be sold and the proceeds of the sale applied to the payment of—

(i) the amount due on account of the fee;

(ii) such penalty not exceeding the amount of the fee as the [3][executive authority] may direct; and

(iii) a sum of eight annas on account of charges incurred in connexion with the seizure, detention and sale.]

[1][270-E. (1) No person shall open a new pri-

LEG. REF.

1. Sections 270-B to 270-E and the heading thereto were inserted by S. 118 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. These words were substituted for the words 'defray their amount' by S. 10 (1) of the Madras Motor Vehicles Taxation (Amendment) Act, 1932 (Madras Act V of 1932).

3. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

—*Esssentials to be proved.*—Before a person can be held to turn a cart-stand or lorry-stand at a place without obtaining a licence, contrary to the provision of the Act, it must be proved that he had control over that use of that place or site and that lorries or vehicles were parked in that place with his permission. The mere fact that lorries are parked as a particular site in the municipality for the purpose of loading or unloading and that the accused was a broker dealing in the securing of custom for such lorries would not by itself suffice to raise a presumption that the accused was running a lorry-stand in that place. (1958) 1 M.L.J. 87=71 L.W. 137=1958 Mad. 281 (2)=(1958) M.L.J. (Cr.) 66.

Sec. 270-D—Scope—Recovery under S. 270-D instead of by suit—If improper.—A Municipality cannot be said to act indiscretly or improperly in recovering its dues under S. 270-B, in the manner provided by S. 270-D instead of by filing a suit. On the contrary it is clearly the duty of the Municipality to utilise the cheap and expeditious method of recovery provided by the Act. 207 I.C. 292=A.I.R. 1943 Mad. 122=(1942) 2 M.L.J. 472.

Sec. 270-E.—Applicability — "Keeping open" private cart-stand.—It is not the use of the place by its owner for his vehicles that requires a licence under S. 270-E. The licence is required only to open or to "keep open" a private cart-stand. A private cart-stand is kept open only if it is kept open

Licence for private cart-stand.

vate cart-stand or continue to keep open a private cart-stand unless he obtains from the council a licence to do so.

(2) Application for such licence shall be made by the owner of the place in respect of which the licence is sought [1][not less than thirty and not more than ninety days before the opening of such place as a cart-stand, or the commencement of the year for which the licence is sought to be renewed] as the case may be.

(3) The council shall, as regards private cart-stands already lawfully established and may, at its discretion, as regards new private cart-stands, grant the licence applied for subject to such regulations as to supervision and inspection and to such conditions as to conservancy as the council may think proper; or the council may refuse to grant any such licence for any new private cart-stand. The council may, however, at any time for breach of the conditions thereof suspend or cancel any licence which has been granted under this section. The council may also modify the conditions of the licence to take effect from a specified date.

(4) When a licence is granted, refused, suspended, cancelled or modified under this section, the council shall cause a notice of such grant, refusal, suspension, cancellation or modification, in English and a vernacular language of the district to be posted in some conspicuous place at or near the entrance to the place in respect of which the lieence was sought or had been obtained.

(5) The council may levy for every licence granted under this section a fee not exceeding three hundred rupees per annum.

LEG. REF.

1. Substituted by Madras Act XXXVIII of 1942.

---

to others in charge of vehicles, besides the owner of the place, to keep their vehicles there, to let their vehicles stand there. Where the premises are exclusively used by the owner for his own transport business, whether kept open or not for other purposes, they are not kept open as a private cart-stand. No licence fee is therefore leviable under S. 420-E in respect of such premises. (1957) 2 M.L.J. 443=(1957) Mad. 1032=1957 Mad. 781.

Sec. 270-E.—The petitioner had a shed at T. His motor buses were taken to that shed. On arrival at T the passengers in the bus alighted at the shed, and the new passengers for the return journey took their seats in the buses there. The buses did actually stand in the shed. Held, that the shed where the buses not merely stopped for a shorter or longer time, but did actually 'stand' for the purpose of their owner's business, was a 'cart-stand' in the sense in which that term is used in S. 270-E of the Act. 176 I.C. 185=A.I.R. 1938 Mad. 535=(1938) 1 M.L.J. 485.

Secs. 270-E and 338—Scope—Licence for old cart-stand with conditions—Failure to comply with conditions—Offence—S. 270-E does not impose any duty on private persons except that it says that no person shall open a new private cart-stand or continue to keep open such a stand unless licensed to do so. The petitioner who had long been in possession of an old cart-stand applied on 20—3—1940 to the executive authority of the Municipality to renew his licence for the year 1940-1941. He was granted a licence on 4—12—1940 subject to certain conditions and this licence with conditions imposed reached him on 18—1—1941. He did not comply with the conditions; and so a prosecution was launched on 19—3—1941. No notice was given to him as required by S. 338 of the District Municipalities Act. Held, (1) sub-S. (3) of S. 270-E of the Act imposed an obligation not on the petitioner but on the municipality to issue a licence in the case of the old cart-stand, and the petitioner who did take out a licence did not contravene any of the provisions of S. 270-E in failing to comply with the terms or conditions of the licence, and S. 313 did not apply; (2) that the petitioner's offence was one punishable under S. 338, but as no notice was given to him as required by S. 338, he could not be convicted. 206 I.C. 623=44 Cr. L.J. 548=1943 M.W.N. 148 (1)=56 L.W. 218=A.I.R. 1943 Mad. 336=(1943) 1 M.L.J. 247.

(6) Every licence granted under this section shall expire at the end of the year.]

Inspection of places for sale, etc.

Duty of executive authority to inspect.

271. It shall be the duty of the [1][executive authority] to make provision for the constant and vigilant inspection of animals, carcasses, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, milk, ghee, butter, oil and any other articles exposed or hawked about for sale or deposited in or brought to any place for the purpose of sale or of preparation for sale.

Powers of executive authority for purposes of inspection.

272. (1) The [1][executive authority] or any person authorized by him in writing for the purpose may without notice enter any slaughter-house or any place where animals, poultry or fish intended for food are exposed for sale or where articles of food are being manufactured or exposed for sale at any time by day or night, when the slaughter, exposure for sale or manufacture is being carried on and inspect the same and any utensil or vessel used for manufacturing, preparing or containing any such article.

(2) If the [1][executive authority] or any person so authorized by him has reason to believe that in any place any animal intended for human food is being slaughtered or any carcass is being skinned or cut up or that any food is being manufactured, stored, prepared, packed, cleansed, kept or exposed for sale, or sold without, or otherwise than in conformity with a licence, he may enter any such place without notice, at any time by day or night for the purpose of satisfying himself whether any provision of laws, by-laws, or regulations or any condition of a licence is being contravened.

(3) No claim shall lie against a [1][executive authority] or any person acting under his authority or the council for any damage or inconvenience necessarily caused by the exercise of powers under this section or by the use of any force necessary for effecting an entry into any place under this section.

(4) In any legal proceedings in respect of powers exercised under this section in which it is alleged that any animals, poultry, fish or articles of food were not kept, exposed, hawked about, manufactured, prepared, stored, packed, or cleansed for sale or were not intended for human food, the burden of proof shall lie on the party so alleging.

Preventing inspection by executive authority.

273. No person shall in any manner whatsoever prevent the [1][executive authority] or person duty authorised by him exercising his powers under the last preceding section.

Power of executive authority to seize diseased animals, noxious food, etc.

274. If any animal, poultry or fish intended for food appears to the [1][executive authority] or to a person duly authorized by him, to be diseased, or any food appears to him to be noxious, or if any vessel or utensil used in manufacturing, preparing or containing such article appears to be of such kind or in such state as to render the article noxious, he may seize or carry away or secure such animal, article, utensil or vessel order that the same may be dealt with as hereinafter provided.

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

Explanation.—Meat subject to the process of blowing shall be deemed to be noxious.

Removing or interfering with articles seized.

275. No person shall remove or in any way interfere with an animal or article secured under the last preceding section.

Power to destroy article seized.

276. (1) When any animal or article of food is seized under section 274 it may, with the consent of the owner or person in whose possession it was found, be forthwith destroyed in such manner as to prevent its being used for human food or exposed for sale, and if the article is perishable, without such consent.

(2) Any expenses incurred in destroying any animal or article under sub-section (1) shall be paid by the owner or person in whose possession it was at the time of its seizure.

Production of articles, etc., seized before magistrate and powers of magistrate to deal with them.

277. (1) Articles of food, animals, poultry, fish, utensils, vessels, etc., seized under section 274 and not destroyed under section 276 shall as soon as possible be produced before a magistrate.

(2) Whether or not complaint is laid before a magistrate of any offence under the Indian Penal Code or under this Act, if it appears to the magistrate on taking such evidence as he thinks necessary that any such animal, poultry or fish is diseased, or any such article is noxious or any such utensil or vessel is of such kind or in such state as is described in section 274 he may order the same;

(a) to be forfeited to the council;

(b) to be destroyed at the charge of the owner or person in whose possession it was at the time of seizure, in such manner as to prevent the same being again exposed or hawked about for sale, or used for human food or for the manufacture or preparation of, or for containing, any such article as aforesaid.

Disposal of the dead.

Registration or closing of ownerless places for disposal of dead.

278. (1) Every owner or person having the control of any place used at the date of the coming into operation of this Act, as a place for burying, burning, or otherwise disposing of the dead shall, if such place be not already registered, apply to the council to have such place registered.

(2) If it appears to the council that there is no owner or person having the control of such place it shall assume such control and register such place, or may, with the sanction of the [1][State Government], close it.

Licensing of places for disposal of dead.

279. (1) No new place for the disposal of the dead, whether public or private, shall be opened, formed, constructed, or used unless a licence has been obtained from the council on application.

(2) Such application for a licence shall be accompanied by a plan of the place to be registered, showing the locality, boundary and extent

LEG. REF.

1. The words "Provincial Government" were substituted for the word 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order (1937) and for the words "Provincial" the word "State" was substituted by A.L.O., 1950.

thereof, the name of the owner or person or community interested therein, the system of management and such further particulars as the council may require.

(3) The council may—

(a) grant or refuse a licence, or

(b) postpone the grant of a licence until objections to the site have been removed or any particulars called for by it have been furnished.

Provision of burial and burning grounds and crematoria within or without municipality.

280. (1) The council may, and shall if no sufficient provision exists, provide at the cost of the municipal fund places to be used as burial or burning grounds or crematoria, either within or without the limits of the municipality, and may charge rents and fees for the use thereof.

(2) The council may farm out the collection of such rents and fees for any period not exceeding three years at a time and on such terms and conditions as it may think fit.

(3) If the council provides any such place without the limits of the municipality, all the provisions of this Act and all by-laws framed under this Act for the management of such places within the municipality shall apply to such place.

Register of registered, licensed and provided places and prohibition of use of other places.

281. (1) A book shall be kept at the municipal office in which the places registered, licensed, or provided under sections 278, 279 or 280 and all such places registered, licensed or provided before the commencement of this Act, shall be recorded, and the plans of such places shall be filed in such office.

(2) Notice that such place has been registered, licensed or provided as aforesaid shall be affixed in English and in at least one vernacular language to some conspicuous place at or near the entrance to the burial or burning ground or other place as aforesaid.

(3) No person shall bury, burn or otherwise dispose of any corpse except in a place which has been registered, licensed or provided, as aforesaid.

Report of burials and burnings.

282. The person having control of a place for disposing of the dead shall give information of every burial, burning or other disposal of a corpse at such place to any person appointed by the [1][executive authority] in that behalf.

Prohibition against use of burial and burning grounds dangerous to health or overcrowded with graves.

283. (1) If the council is satisfied—

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of Madras Act XV of 1933.

Sec. 282.—Evidentiary value of death register maintained by municipality. See 1938 A.L.J. 235=1938 A. 242 .

(a) that any registered or licensed place for the disposal of the dead is in such a state or situation as to be, or to be likely to become dangerous to the health of persons living in the neighbourhood thereof, or

(b) that any burial ground is overcrowded with graves,

and if in the case of a public burial or burning ground or other place as aforesaid another convenient place duly authorized for the disposal of the dead exists or has been provided for the persons who would ordinarily make use of such place,

it may, with the previous sanction of the [1][State Government], give notice that it shall not be lawful after a period to be named in such notice to bury, burn or otherwise dispose of any corpse at such place.

(2) Every notice given under sub-section (1) shall be published in the district gazette and by beat of drum.

(3) After the expiry of the period named in such notice it shall not be lawful to bury, burn or otherwise dispose of a corpse at such place.

Prohibitions in respect of corpses.

284. No person shall—

(a) bury or cause to be buried any corpse or part thereof in a grave whether dug or constructed of masonry or otherwise, in such manner that the surface of the coffin or the surface of the body where no coffin is used, is at a less depth than five feet from the surface of the ground; or

(b) build or dig or cause to be built or dug any grave in any burial ground at a less distance than two feet from the margin of any other existing grave; or

(c) without the sanction in writing of the [2][executive authority], or an order in writing of a magistrate, reopen a grave already occupied; or

(d) convey or cause to be conveyed a corpse or part thereof to any burial or burning ground, and not cause the burial or burning of the same to commence within six hours after its arrival at such place; or

(e) when burning or causing to be burnt a corpse or part thereof permit the same or any part thereof or its clothes to remain without being completely reduced to ashes; or

(f) carry through any street a corpse or part thereof not decently covered; or

(g) while carrying a corpse or part thereof within the municipality leave the same in or near any street for any purpose whatever; or

(h) remove, otherwise than in a closed receptacle, any corpse or part thereof kept or used for the purpose of dissection.

Grave-diggers' licence.

285. No person shall discharge the office of a grave-digger or other attendant at a public place for the disposal of the dead (other than a place provided by the Govern-

LEG. REF.

1. Vide Footnote 1 on page 189.
2. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

ment) unless he has been licensed in that behalf by the [1][executive authority.] Such licence may be withdraws or cancelled at the discretion of the council.

CHAPTER XIII.

Vital Statistics and the Prevention of Disease.

Vital statistics.

Compulsory registration of vital statistics.

286. (1) The municipal council shall register all births and deaths occurring in the municipality.

(2) [Information of births and deaths snall be given and their] registration shall be made and enforced in the prescribed manner.

Dangerous diseases.

Definition of dangerous disease.

287. "Dangerous disease" means a disease specified in Schedule VI.

Obligation of medical practitioner or owner or occupier of house to report dangerous disease.

288. (1) If any medical practitioner becomes cognizant of the existence of any dangerous disease in any private or public dwelling (not being a public hospital) in the municipality, he shall inform the [1][executive authority] with the least practicable delay.

(2) The information shall be communicated in such form and with such details as the [1][executive authority] may recuire. The [1][executive authority] may pay a fee not exceeding one rupee for each intimation by a private medical practitioner of a case occurring in his practice.

(3) This section shall apply to a hakeem or a vaidyan.

(4) With the previous approval in all cases of the Collector of the district the [1][executive authority] may direct the compulsory notification by the owner or occupier of every house within the municipal limits during such period and to such officer as the [1][executive authority] may prescrible of all deaths from or occurrence of dangerous diseases in his house.

Power of entry into suspected places.

289. The [1][executive authority] [2][or health officer] may at any time by day or by night without notice, or after giving such notice as may appear to him reasonable inspect any place in which any dangerous disease is reputed or suspect to exist, and take such measures as he may think fit to prevent the spread of such disease beyond such place.

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. These words were inserted by S. 120 of Madras District Municipalities (Amendment) Act, 1930 (X of 1930).

Disinfection of buildings and articles.

290. (1) If the [1][executive authority] [2][or health officer] is of opinion that the cleansing or disinfecting of any premises or part thereof, or of any article therein which is likely to retain infection, will tend to prevent or check the spread of any dangerous disease, he may by notice require the occupier to cleanse or disinfect the same in the manner and within the time specified in such notice.

(2) If the [1][executive authority] [2][or health officer] considers that immediate action is necessary, or that the occupier is by reason of poverty or otherwise unable effectually to comply with his requisition, the [1][executive authority] [2][or health officer] may himself, without notice, cause [3][such premises or article] to be cleansed or disinfected and for this purpose may cause such article to be removed from the premises; and the expenses incurred by the [1][executive authority] [2][or health officer] shall be recoverable from the said occupier in cases in which he is, in the opinion of the [1][executive authority] [2][or health officer], not unable by reason of poverty effectually to comply with such requisition.

Provision of places for disinfection and power to destroy infected articles.

291. (1) The [1][executive authority] shall from time to time notify places at which conveyances, clothing, bedding, or other articles which have been exposed to infection from any dangerous disease shall be washed or disinfected.

(2) The [1][executive authority] may direct any clothing, bedding or other articles likely to retain such infection to be disinfected or destroyed and shall, on demand give compensation for any article destroyed under this sub-section.

(3) No person shall wash such clothing or bedding or other articles in any places other than those set apart for such purposes under sub-section (1).

Prohibition against transfer of infected articles.

292. No person shall, without previously disinfecting it, give, lend, let, hire, sell, transmit or otherwise dispose of any article which he knows or has reason to know has been exposed to infection from any dangerous disease:

Provided that nothing in this [4][section] shall apply to a person who transmits with proper precautions any article for the purpose of having it disinfected.

Power of council to prohibit use of water likely to spread infection.

293. If the chief medical officer of the district, the health officer or the local medical officer certifies that the water in any well, tank or other place within the limits of the municipality is likely, if used for drinking, to engender or cause the spread of any dangerous disease, the council may, by public notice, prohibit the removal or use of such water for drinking and domestic purposes during a specified period.

LEG. REF.

1. These words were substituted for the word 'chairman', by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. These words were inserted by S. 121 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. These words were substituted for the words 'such building or article' by S. 121 (ii) ibid.

4. Substituted by the Madras Act XXXVIII of 1942.

Executive authority may order removal of patients to hospital.

294. When a hospital or other place for the reception of persons suffering from dangerous diseases is provided by the municipal council the [1][executive authority] may, on a certificate signed by a medical practitioner registered under the Madras Medical Registration Act, 1914, arrange for, or direct the removal to such hospital or place of any person suffering from a dangerous disease who is, in the opinion of such medical practitioner, without proper lodging or accommodation, or without medical supervision directed to prevent the spread of the disease, or who is in a place occupied by more than one family.

Prohibition against infected person carrying on occuation.

295. If any person knows or has been certified by the heath officer, the local medical officer, or a registered medical practitioner that he is suffering from a dangerous disease he shall not engage in any occupation, or carry on any trade or business unless he can do so without risk of spreading the disease.

Prohibition against diseased person entering public conveyance.

296. (1) No person who is suffering from any dangerous disease shall, without taking proper precautions against spreading such disease, cause or suffer himself to be conveyed in a public conveyance.

(2) No person who is suffering from any danergous disease shall enter a public conveyance without previously notifying to the owner or driver or person in charge of such conveyance that he is so suffering.

(3) No owner, driver, or person in charge of a public conveyance shall knowingly carry or permit to be carried in such conveyance any person suffering as aforesaid in contravention of sub-section (1).

(4) No owner or driver or person in charge of a public conveyance shall be bound to convey any person suffering as aforesaid, unless and until the said person pays or tenders a sum sufficient to cover any loss and costs that may be incurred in disinfecting such conveyance, anything in any Act relating to public conveyances for the time being in force to the contrary notwithstanding.

(5) A Court convicting any person of contravening sub-section (1) or sub-section (2) may levy, in addition to the penalty for the offence provided in this Act, an additional fine of such amount as the Court deems sufficient to cover the loss and costs which the owner or driver must incur for the purpose of disinfecting the conveyance. The amount of an additional fine so imposed shall be awarded by the Court to the owner or driver of the conveyance:

Provided that if such additional fine is imposed in a case which is subject to appeal the amount shall not be paid to the owner or driver before the period allowed for presenting the appeal has elapsed, or, if an appeal is presented, before the decision of the appeal.

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

Sec. 294: *Isolation Hospitals.*—Before removing an infected person to an Isolation Hospital, the Health Officer must be satisfied that the disease is infectious and further that he has no proper lodging. Disobedience to his order of removal must be proved to be unlawful and negligent and had the effect of spreading the disease. 20 Cr.L.J. 785=38 M.L.J. 80=53 I.C. 689=43 M. 344.

(6) At the time of awarding compensation in any subsequent civil suit relating to the same matter the court shall take into account any sum which the plaintiff shall have received under this section.

Letting of infected buildings.

297. (1) No person shall let or sublet or for that purpose allow any person to enter a building or any part of a building in which he knows or has reason to know that a person has been suffering from any dangerous disease without having the same and all articles therein liable to retain infection disinfected to the satisfaction of the [1][executive authority].

(2) For the purposes of sub-section (1), the keeper of a hotel or lodging-house shall be deemed to let the same or part of the same to any person accommodated therein.

Power to order closure of places of public entertainment.

298. In the event of the prevalence of any dangerous disease within the municipality, the council may by notice require the owner or occupier of any building, booth or tent used for purposes of public entertainment to close the same for such period as it may fix.

Minor suffering from dangerous disease not to attend school.

299. No person being the parent or having the care or charge of a minor who is or has been suffering from a dangerous disease or has been exposed to infection therefrom shall, after a notice from the health officer or the local medical officer that the minor is not to be sent to school or college, permit such minor to attend school or college without having procured from the health officer, the local medical officer or a registered medical practitioner a certificate that in his opinion such minor may attend without undue risk of communicating such disease to others.

No fee shall be charged by the health officer or the local medical officer for the grant of a certificate under this section.

Small-pox.

Compulsory vaccination.

300. (1) Vaccination shall be compulsory in every municipality [2][in respect of such persons and to such extent as may be prescribed].

(2) The procedure prescribed in such rules for enforcing vaccination shall be observed.

Obligation to give information of small-pox.

301. Where an inmate of any dwelling place is suffering from small-pox the head of the family to which the inmate belongs and in his default, the occupier or person in charge of such place, shall inform the [1][executive authority] with the least practicable delay.

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities Amendment Act 1933 (Madras Act XV of 1933).

2. These words were substituted for the words 'to the extent prescribed by rules made by the Governor in Council' by S. 122 of the Madras District Municipalities (Amendment) Act, 1930, (Madras Act X of 1930).

Sec. 298.—Scope—If repugnant to S. 75, Madras Public Health Act. There is no repugnany between the two provisions. 1957 Andh. L.T. 294.

Sec. 300.—Where the petitioner had already been convicted for disobeying a previous notice to produce a child for vaccination, and a second notice was served on him to discontinue his breach of the previous notice, the petitioner cannot be convicted, on noncompliance for the same offence on the same facts. 131 I.C. 156=1931 Mad. 181

Prohibition of inoculatiion for small-pox.

302. (1) Inocculation for small-pox is hereby prohibited.

(2) No person who has undergone the operation of inoculation shall enter any municipality before the lapse of forty days from the date of inoculation without a certificate from a medical practitioner of such class as the council may authorize to grant such certificates stating that such person is no longer likely to produce small-pox by contract or near approach.

PART V.

Subsidiary Legislation and penalties.

CHAPTER XIV.

RULES, BY-LAWS AND REGULATIONS.

Rules and schedules.

Power of [State] Government to make rules.

303. (1) The [1][(State) Government] may make rules to carry out all or any of the purposes of this Ast not inconsistent therewith.

(2) In particular and without prejudice to the generality of the foregoing power [2][they may make rules]—

(a) with reference to all matters expressly required or allowed by this Act to be prescribed;

[3][(b) with reference to all matters not expressly provided for in this Act, relating to the elections of chairman, vice-chairman or councillors including deposits to be made by candidates standing for election as councillors and the conditions under which such deposits may be forfeited:

Provided that the deposit required shall not exceed one hundred rupees]

[4][* * * * * *]

[3][(c) Omitted.]

LEG. REF.

1. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937, and for the word "Provincial" the word "State" was substituted by A.L.O., 1950.

2. These words were substituted for the words 'he may make rules' by the Schedule to the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. This clause was substituted for the original clauses (b) and (c) by S. 123 (i) ibid.

4. Second Proviso to Cl. (b) and the word 'and' of sub-S. (2) of S. 303 omitted by Madras Act XXI of 1939.

=60 M.L.J. 299. *Quaere.*—If an objetion to vaccinating a child on the ground that it was, or was *bona fide* believed to be, injurious to its health can be deemed a reasonable excuse within the meaning of the rule. 60 M.L.J. 299. Continuing to neglect to produce a child for vaccination is a 'continuing breach", an offence under R. (11) (2). 60 M.L.J. 299.

Sec. 303.—The rules framed by the Local Government under the Act must be read as forming part of the Municipalities Act and have the force of law. So long as they are in force, they are as much binding on the Municipal Committee as on the Local Government. 1935 Nag. 224. Rules framed by the Municipal Board have no statutory force, and can be changed from time to time. 174 I.C. 78=1938 All. 57. Departmental instructions are not rules and have not the force of law. I.L.R. (1939) All. 500=1939 All. 383=1939 A.L.J. 332. Before a rule framed by a rule-making authority is declared ultra vires, the Court must be satisfied not only that it had no power to act under the power under which it is purporting to act, but also that it has no power at all under any law to act. 45 M.L. J. 156=1923 M.W.N. 450 (18 M. 230, followed). The rules delegating powers made under S. 46 of the Bombay Municipal Act must be subject to any powers which have been conferred by the Act itself on the

(d) as to the conditions on which property may be acquired by the municipal council or on which property vested in or belonging to the municipal council may be transferred by sale, mortgage, lease, exchange or otherwise;

(e) as to the [1][working] of provident funds;

(f) as to the matters mentioned in rule 37 of the Taxation and Finance Rules in Schelule IV; as to the conditions on which grants-in-aid shall be paid from the municipal fund for purposes of education and medical relief and as to the conditions on which grants and loans may be made to co-operative building societies;

(g) as to the intermediate offices, if any, through which correspondence between the municipal authorities and the [2][(State) Government] or officers of [3][that Government] shall pass;

(h) as to the preparation of plans and estimates for works which are to be partly or wholly constructed at the expense of the municipal council and the power of the municipal authorities or [4][officers of the *(State) Government] [5][* * *] to accord professional or administrative sanction to estimates;

(i) as to the accounts to be kept by the municipal council, the manner in which such accounts shall be audited and published and as to the conditions under which the ratepayers may appear before auditors, inspect books and vouchers and take exception to items entered or omitted therein;

(j) as to the estimates of receipts and expenditure, returns, statements and reports to be submitted by municipal councils;

(k) as to the mode in which the officers of [6][the *(State) Government] shall advise and assist municipal councils in carrying out the purposes of this Act;

(l) as to the interpellation of the chairman by the members of the council.

(m) as to the moving of resolutions at the meetings of the council;

[7][(n) for regulating the sharing between local authorities in the Presidency of Madras of the proceeds of the profession tax [8][* * *] tax on carriage and animals, tax on carts, [9][* * *] and other taxes or income, levied or obtained under this or any other Act;]

LEG. REF.

1. This word was substituted for the words 'establishment and maintenance' by S. 123 (ii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. The words "Provinial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order (1937) and for the word "Provincial" the word "State" was substituted by A.L.O., 1950.

3. These words were substituted for the words 'the Government' by the Second Schedule ibid.

4. These words were substituted for the words 'Government officers' by the Second Schedule ibid.

*Substituted by A.L.O., 1950.

5. The words 'or the Sanitary Board' were omitted by S. 123 (iii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

6. These words were substituted for the word 'Government' by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

7. This clause was substituted for the original by S. 123 (iv) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

8. The words 'surcharge on income-tax' were omitted by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

9. The word 'tolls' was omitted by Schedule I to the Madras Motor Vehicles Taxation Act, 1931 (Madras Act III of 1931).

---

chief officer or on any committee. Thus if it be provided that the chief officer was to have power to issue a notice under section 137 of his own motion, such a rule would

be inconsistent with the Act and be *ultra vires*. But a rule which merely allows the chief officer to sign the notice does not in any way trench on the powers of the executive committee and is not *ultra vires*. 127 I.C. 193=32 Bom.L.R. 757=1930 Bom. 352. A mere failure on the part of the Municipal Board to observe the rules and regulations prescribed in the Manual of Regulations in respect of the convening of special meetings affords no ground for maintaining a suit by the discharged Secretary for a declaration that the special meeting and the special resolution dispensing with his services are null and void. The rules and regulations are a body of rules passed for the guidance of Municipalities in the conduct of their business; and a servant of the Municipality is not entitled to insist that the Municipality should strictly observe the rules and regulations prescribed for the conduct of its business. The rules and regulations do not constitute a contract between the Municipality and its servants. I.L.R. (1937) All. 434=169 I.C. 390=1937 A.L.J. 153=A.I.R. 1937 All. 264. Rules framed by the Governor in Council relating to the election of chairman and vice-chairman of the District Municipalities though not authorised under that provision of law, can yet be supported under S. 303 (2) (c) of the Act. Consequently such rules are not *ultra vires*. 45 M.L.J. 156. A District Judge enquiring into an election petition has no power to restrain the successful candidate by interim injunction from taking his seat in the Council pending the enquiry. 1924 Mad. 797=47 Mad. 700=47 M.L.J. 201. On this section, see also 1928 Mad. 641=110 I.C. 765=55 M.L.J. 632. Where a rule lays down that no Court shall take cognizance of an offence except upon complaint made with the sanction in writing of the Deputy Commissioner, a prosecution without such sanction is not cognizable by any Court. 37 P.L.R. 1922=1922 Lah. 183. A Municipal Board is competent to make a bye-law that "no motor car or lorry plying for hire shall be allowed to halt or run for the purpose of searching passengers at a public place other than the stand fixed for the purpose." 1939 A.L.J. 500=1939 All. 466 (F.B.). There is nothing to prevent a Municipality from passing by-laws relating to the exhibition of variety shows, carnivals, etc. Such bye-laws, if passed properly, are legally passed. I.L.R. (1937) All. 602=38 Cr.L.J. 797 (2)=1937 A.L.J. 388=A.I.R. 1937 All. 418.

Sec. 303 (2) (*b*).—Rules under, R. 1 (2) (b).—Effect of on powers of Revenue divisional officer under S. 12 (7). See (1953) 2 M.L.J. 293=1953 Mad. 969, cited under S. 12 (7), supra.

Rule 7: *Validity*—The rule is *intra vires*, (1956) **An.W.R. 161.**

Rule 27-*A* (1) (*a*) (*amended*)—*Scope and effect of*.—The only effect of the word "afterwards" in the new R. 27-A (1) of the rules under S. 303 (2) (*b*) is the deletion of a superfluous word, and no change has been brought about in the structure. If there is any facility for identifying a voter at the time of counting or thereafter. Rule 27-A (1) (a) is infringed and the voting paper is therefore invalid. (1954) 1 M.L.J. 573=1954 Mad. 779.

Rule 27-*A* (4): *Scope*.—Omission to raise objection to validity of voting paper at time of counting—Effect—The omission to object to the validity of a ballot paper at the time of counting does not operate as a bar to the objection being raised before the Election Commissioner. (1954) 1 M.L.J. 573=1954 Mad. 779.

Rules 1 *and* 2 (2) *of the rules under S.* 303 (2)—*Election petition—Amendment—C. P. Code, O.* 6, *R.* 17—*Applicability*.—Where the real question in controversy between the parties to an election petition is whether the election of the successful party is liable to be set aside on the grounds set forth in the election petition, it is not necessary to add an altogether new ground attacking the validity of the election for deciding the question at issue. The election tribunal has no jurisdiction to permit such an amendment. Assuming that O. 6, R. 17, C. P. Code, is applicable to an election petition, that rule would not permit a new charge to be added by way of amendment. See (1956) 1 M.L.J. 40=(1956) Mad. 719 =68 L.W. 803=1956 Mad. 105.

Rule 7: *Validity*.—Rule 7 of the Rules for the conduct of elections is *intra vires* the powers of the Government under S. 303 (2) (b). (1956) An.W.R. 1161=1957 And. Prad. 683.

Sec. 303 (2) (*b*), *R.* 10—*Setting aside election—Essentials for*.—For setting aside an election, R. 10 (e) lays down two contions: (1) there should be non-compliance with the provisions of the Act or the rules made thereunder; and (2) the result of the election should have been materially altered. The Election Commissioner must decide both these points. Mere contravention of a rule is not enough. See 1955 An. W.R. 909.

Rules 11 (*b*) *and* 28.—*Defeated candidate—If can be declared elected*.—R. 11 has to be read along with the other rules. The discretion of the Commissioner under R. 11 (2) to declare a defeated candidate elected is not absolute or arbitrary, but a judicial one and is conditional upon compliance with R. 28 of the Elections rules read with R. 9 of the rules for the decision of election disputes. A defeated candidate who has obtained a minority of votes cannot be dec-

[1][(o) (Omitted.)]

(p) as to the form of registers and returns of births and deaths and the manner in which the registers shall be maintained, the dates on which returns shall be made and the officer to whom returns shall be sent;

[2][(q) as to the transfer of allotments entered in the sanctioned budget of a municipal council from one head to another;

(r) as to the powers of auditors, inspecting and superitending officers and officers authorized to hold inquiries, to summon and examine witnesses, and to compel the production of documents and all other matters connected with audit, inspection and superintendence; and

(s) for determining the cost of buildings and lands.]

(3) In making any rule the [3][*(State) Government] may provide that a breach thereof shall be punishable with a fine which may extend to one hundred rupees.

Making of rules after previous publication.

[4][304.] The power to make rules under [5][section 303] is subject to the following conditions:—

(a) A draft of the rules shall be published in the [6][Official Gazette].

(b) Such draft shall not be further proceeded with until six weeks after such publication or until such later date as the [3][*(State) Government] may appoint.

(c) All rules made under [5][section 303] shall be published in the [6][Official Gazette] and upon such publication shall have effect as if enacted in this Act.

Power of [State] Government to alter schedules.

[7][305. (1) The [3*(State) Government] may make rules altering, adding to or cancelling any of the following Schedules to this Act, namely:—

Schedules II, III, IV, V and VI.

(2) The [3][*(State) Government] may by notification under sub-section (1) of section 12-C include any municipality in Schedule IX but shall not remove therefrom any municipality so included.

(3) All references made in this Act to any of the aforesaid Schedules shall be construed as referring to such Schedules as for the time being amended in exercise of the powers conferred by sub-section (1) or sub-section (2), as the case may be.]

[8][305-A. A draft of the rules proposed to be made under sub-section

---

LEG. REF.

1. Clause (o) was omitted by S. 123 (v) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. Clauses (q), (r) and (s) were added by S. 123 (vi) ibid.

3. These words were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

*Substituted by A.L.O., 1950.

4. Original Ss. 304 and 305 were renumbered as Ss. 305 and 304 respectively by S. 124 (1) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

5. The word and figures 'S. 303' were substituted for the words and figures 'Ss. 303 and 304' by S. 124 (2) ibid.

6. These words were substituted for the words *'Fort St. George Gazette'* by paragraph (4) (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

7. This section was substituted for the original section by S. 13 of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

8. This section was inserted by section 124 (3) (b) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

---

lared elected. (1956) 2 M.L.J. 575=70 L.W. 48.

Procedure for the making of rules under sub-section (2) of section 77-A and section 305.

(2) of section 77-A or under [1-2][sub-section (1) of section 305] shall be laid [3][before each of the (Houses)* of the (State)† Legislature] and the rules shall not be made [4][unless both Houses] [5][approve] the draft either without modification or addition or with modifications or additions [6][to which both the (Houses)* agree]; but upon such approval being given, the rules may be made in the form in which they have been approved and such rules on being so made shall be notified in the [7][Official Gazette] and shall thereafter be of full force and effect.]

By-laws.

Power of council to make by-laws.

306. The council may make by-laws, not inconsistent with this Act or with any other law to provide—

[8][(1) for all matters expressly required or allowed by this Act to be provided for by by-law;]

[9][(1-A)] for the due performance by all municipal officers and servants of the duties assigned to them;

(2) for the regulation of the time and mode of collecting the taxes [10][and duties] under this Act;

[11][(2-A) for determining the conditions under which lands shall be deemed to be appurtenant to buildings];

LEG. REF.

1-2. These words and figures were substituted for the word and figures 'section 305' by S. 14 of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

3. These words were substituted for the words 'on the table of the Legislative Council' by the Second Schedule to the Government of India. (Adaptation of Indian Laws) Order, 1937.

4. These words were substituted for the words 'unless the Legislative Council' by the Second Schedule, ibid.

5. This word was substituted for the word 'approves' by paragraph 5 (2) ibid.

6. These words were inserted by the Second Schedule ibid.

7. These words were substituted for the words '*Fort St. George Gazette*' by paragraph 4 (1) ibid.

8. This clause was inserted by S. 125 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

9. The original Cl. (1) was renumbered as Cl. (1-A) by S. 125 (i) ibid.

10. These words were substituted for the words 'duties and tolls' by Schedule I to the Madras Motor Vehicles Taxation Act, 1931 (Madras Act III of 1931).

11. This clause was inserted by S. 125 (ii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

*Substituted by A.A.O., 1950.

†Substituted by A.L.O., 1950.

Rules 11 (2) *and* 33.—Election dispute—Power of Election Commissioner to determine by lot. The election Commissioner cannot claim any inherent powers; the powers specifically conferred upon him do not include the power to determine by casting lots. (1957) 1 M.L.J. 247=70 L.W. 487.

Sec. 306.—A bye-law must conform with the provisions of the enactment under which it purports to be made. 22 Cr.L.J. 739=64 I.C. 129=2 Lah. 239. See also 4 P.R. 1887 Cr. (Ref. to in 2 P.R. 1910, Cr.; 109 P.L.R. 1909). A bye-law which is manifestly unreasonable is *ultra vires*. (Ibid). A statutory right (of refund) cannot be curtailed by a bye-law. 1930 Mad. 648=1930 M.W.N. 427=126 I.C. 634. A bye-law to be valid must be (1) *intra vires*, (2) certain and positive in its terms, (3) not repugnant to the general law, and (4) reasonable. I.L.R. (1937) 2 Cal. 397=1937 Cal. 603. Though the Act may use the words "it shall be lawful" in respect of rule-making power the framing of the rules being necessary to carry out the objects of the Act, the words, "it shall be lawful" which might otherwise be permissive are really mandatory, the permissive form being merely a courteous convention. The Act really imposes a duty on the executive and it is implied that a public body will carry out the duties indicated by the legislature in order that the purpose of the legislature may not be frustrated. 152 I.C. 805=15 P.L.T. 623=1934

Pat. 670. In matters which require a bye-law to be framed under the Municipal Act the municipal committee cannot act without so framing necessary bye-laws. Before constructing a tanga stand, the Committee must frame bye-laws under the Act; and if they are not framed the construction of the stand is *ultra vires*. A suit in a Civil Court in respect of such an act is therefore competent. 16 Lah. 517=152 I.C. 850=1935 Lah. 196. The mere fact of the Local Government having signified its approval to a bye-law would not render the bye-law valid in the absence of clear and unmistakable language in the Act empowering a Committee to make such a bye-law. 142 I.C. 857=1933 Nag. 68. A statutory power conferred upon a Municipal Council to make bye-laws for regulating and governing a trade does not, in the absence of an express power of prohibition, authorise the making it unlawful to carry on a lawful trade in a lawful manner. 55 A. 538=143 I.C. 796=1933 A. 593. A power to make bye-laws for the regulation of trade does not confer or imply a power to prohibit or prevent cramp or harass trade. Nor can it interfere with the civil rights and liabilities of traders or the terms on which they should transact business. Held, that the Notification No. 987—611—VIII, dated 18th March, 1926, providing that "no deduction in kind or cash from the cotton, grain or timber exposed for sale shall be made on account of charity, gratuity, etc." was *ultra vires*. 142 I.C. 857=34 Cr.L.J. 408=1933 Nag. 68. Power of Municipal Council to make bye-laws. See 43 P.R. 1888 Cr.; 10 P.R. 1887 (Cr.); 18 P.R. 1874 (Cr.); 27 P.R. 1889 (Cr.). When a tax has been lawfully imposed the Municipal Committee has power to make a bye-law with a view to check the evasion of such a tax. Such a bye-law is not *ultra vires*. 43 P.R. 1888 (Cr.). A bye-law or rule which is inconsistent with and goes beyond the powers conferred on the rule-making authority is bad and not of any force. 4 P.R. 1887 (Cr.). See also 4 I.C. 951. So also a bye-law which makes evasion or attempt at evasion of payment of tax is improper, if it makes no distinction between lawful and unlawful and honest and dishonest evasion. 27 P.R. 1887 (Cr.). *See also* 4 I.C. 951. Where there is no rule or bye-law providing for a tax, evasion of such tax is not punishable under the ordinary criminal law. 18 P.R. 1874 (Cr.). Infringement of bye-law—When offence. 13 P.R. 1909 (Cr.)=4 I.C. 861. As to bye-law prohibiting prostitutes from residing in a particular area, see 136 I.C. 787=33 Cr.L.J. 348=1932 A.L.J. 28=1932 All. 70; 54 All. 1=137 I.C. 80=1932 All. 110; 54 All. 611=1932 All. 537; 39 I.C. 804=1932 All. 264. A bye-law must conform with the provisions of the enactment under which it purports to be made. The definition of "occupier" in the bye-laws of the Delhi Municipality framed under S. 188 of the Municipal Act is *ultra vires* in so far as it is consistent with the definition of that term in S. 3 (10) of the Act. A bye-law which makes the owner of a building responsible for the use of the building by his tenant, where he has no legal power to control the acts of his tenant with regard to the use of the premises, is manifestly unjust to the owner and hence unreasonable. A bye-law which is unreasonable is *ultra vires*. 2 Lah. 239=64 I.C. 129=22 Cr.L.J. 739 A bye-law prohibiting the erection of compound wall not forming part of a building is *ultra vires*. 3 Pat.L.T. 143=1 Pat. 44 =63 I.C. 290. Bye-law depriving public of a right of way is *ultra vires*. Approval by Local Government does not render bye-law valid. 20 Cr.L.J. 453=15 N.L.R. 105=51 I.C. 341. Bye-laws for levying licence fees on lodging houses are not *ultra vires*. 13 Bur.L.T. 107=22 Cr.L.J. 113 =59 I.C. 545. Bye-law—Condition restricting rate of interest on pawn-brokers is not *ultra vires*. 13 Bur.L.T. 208=18 Cr. L.J. 1012=42 I.C. 756. Under S. 418 (2) of the Calcutta Municipal Act, the burden of proving that any food in respect of which the prosecution is instituted was not intended for human consumption is, no doubt, on the accused. But before this section could be invoked, it is necessary for the prosecution to prove that what is charged as unwholesome food is "food". 41 C.W. N. 1344.

Secs. 306 (3) (*a*) (*b*) *and* (*c*)—*Bye-laws made in* 1946, *Bye-laws* 7 (*a*) *and* (9) (*a*) —*Validity—Ss.* 131 *and* 307—*Powers of the municipality—Pre-existing contract—Effect of*—A combined reading of Ss. 131, 306 and 307 of the Act makes it clear that the municipality could frame bye-laws in respect of buildings constructed before the bye-laws were made for the supply of water for domestic consumption. Neither S. 306 nor S. 307 saved pre-existing or implied contracts precluding the municipality from making bye-laws in derogation of any terms of any contract. The bye-laws framed were only prospective and not retrospective. Since the Act conferred an express power upon the municipality to frame bye-laws, the bye-laws are valid, and even if there was a contract, that could not effect the statutory powers of the municipality. 67 L.W. 1208=(1954) 2 M.L.J. (Andhra) 27.

Under S. 306 (3) (d), a Municipal Council has power to make a bye-law which would apply not only to house connections that might be made in future, but also to existing house connections. Where a bye-law made in 1933, to come into force on January, 1934, provided that "every house to which water connection is laid shall be provided with only one service pipe connection...." and that "no house shall be supplied with water from existing or prospective connections of any adjoinig house

(3) (a) for the use of public tanks, wells, conduits and other places or works for water-supply;

(b) for the regulation of public bathing, washing and the like;

(c) for the maintenance and protection of the water-supply system, and the protestion of the water-supply from contamination;

(d) for the conditions on which house-connexions with the council's water-supply mains may be made; for their alteration and repair and for their being kept in proper order;

(e) for supply of water for domestic consumption and use;

(f) for the prevention of waste of water;

(g) for the measurement of water;

(h) for the compulsory provision of cisterns and meters;

(i) for the supply of water in case of fire;

(4) fotr the maintenance and protection of the lighting system;

(5) (a) for the maintenance and protection of the drainage system;

(b) for the construction of house drains, and for regulating their situation, mode of construction and materials;

(c) for the alteration and repair of house drains;

(d) for the cleansing of house drains;

(e) for the construction of cess-pools, septic tanks, filters and drains;

(f) for the payment or apportionment of money payable on account of pipes or drains common to more premises than one;

LEG. REF.

Andhra Amendments: S. 306.—Andhra Act IV of 1956 has substituted the word "connections" for the word "house-connections" in sub-clause (d) of clause (3) of S. 306, and has omitted the word "domestic" in sub-clause (e) of clause (3).

---

or premises;" Held, that the bye-law, read as a whole, applied not only to future connections but was retrospective and applied to existing connections as well, and was not ultra vires as it was not unreasonable. 1943 M.W.N. 596=216 I.C. 85=56 L.W. 652=A.I.R. 1944 Mad. 14=(1943) 2 M.L.J. 402.

Bye-law No. 1 is badly drafted.—It only says that restaurants shall be constructed of durable materials but it does not prohibit any one from doing anything. It does not authorize the Municipal Chairman to issue any notice of any kind nor does it say that failure to obey a notice is punishable. Hence a person who uses, for hotels, etc., any premises not constructed as mentioned in Bye-law No. 1 will not be liable to penalty. 146 I.C. 77=1933 Mad. 416. The Committee has no power to put restriction upon the permission granted by it. It has power to refuse permission but if it once grants the same it cannot put any restriction or limitations upon it. Where therefore the Committee grants permission to build a verandah in front of a person's house imposing conditions as regards payment of ren and removal of structure in future in case the Committee so required, such conditions are *ultra vires* in the absence of a bye-law conferring those powers on the Committee. (51 I.C. 831, Rel. on; 1922 Pat. 118, App.) 123 I.C. 84=11 Lah. 276=1930 Lah. 246. As to the burden of proof of promulgation of Municipal Rule, see 139 I.C. 134=36 C.W.N. 823=1932 Cal. 833. The question whether a fee levied by a bye-law framed under U.P. Municipalities Act is excessive and unreasonable is mixed question of fact and law and cannot be raised in revision for the first time. 56 All. 241=1934 A.L.J. 80=1934 All. 39.

(6) for the cleansing of latrines, earth-closets, ash-pits and cess-pools, and the keeping of latrines supplied with sufficient water for flussing;

(7) (a) for the testing of water pipes and drains in private premises, the recovery or the apportionment of the cost of such testing, and the breaking up of ground or of buildings for the purpose of such testing;

(b) for the licensing of plumbers and fitters, and for the compulsory employment of licensed plumbers and fitters;

(8) (a) for laying out of streets, and for determining the information and plans to be submitted with applications for permission to lay out streets; and for regulating the level and width of public streets and the height of buildings abutting thereon;

[1][(b) * *].

[2][(b) * *].

[1](b) for the protection of avenues, trees, grass and other appurtenances of public streets and other places;

(9) for the regulation of the use of parks, gardens and other public or municipal places [2][but not including the regulation of traffic therein, the reservation thereof for particular kinds of traffic, or the closing thereof or parts thereof to traffic];

(10) (a) for the regulation of building;

(b) for determining the information and plans to be submitted with applications to build;

(c) for the licensing of builders and surveyors and for the compulsory employment of licensed builders and surveyors;

(11) for the regulation of hotels, lodging houses, boarding houses, choultries, rest-houses, emigration depots, restaurants, eating houses, cafes, refreshment rooms, coffee houses, and any premises to which the public are admitted for repose or for the consumption of any food or drink;

(12) for regulating the mode of constructing stables, cattle-sheds and cow-houses and connecting them with municipal drains;

(13) for the sanitary control and supervision of places used for any of the purposes specified in Schedule V and of any trade or manufacture carried on therein;

(14) (a) for the control and supervision of slaughter-houses and of places used for skinning and cutting up carcasses;

(b) for the control and supervision of the methods of slaughtering;

(c) for the control and supervision of butchers carrying on business in the municipality or at any slaughter-house without the municipality [3][provided by the municipal council or licensed by the executive authority, as the case may be];

(15) for the inspection of milch cattle, and the regulation of the ventilation, lighting, cleaning, drainage and water-supply of dairies and cattle-sheds in the occupation of persons following the trade of dairy man or milk seller;

LEG REF.

1. Sub-clauses (b) and (c) were omitted and sub-clause (d) was relettered as sub-clause (b) by S. 6 (ii) of the Madras Traffic Control Act, 1938 (Madras Act V of 1938).

2. These words were added by S. 6 (iii) ibid.

3. Substituted by Madras Act XXXVIII of 1942.

(16) for enforcing the cleanliness of milk stores and milk shops and vessels and utensils used by the keepers thereof or by hawkers for containing or measuring milk or preparing any milk product and for enforcing the cleanliness of persons employed in the milk-trade;

(17) for requiring notice to be given whenever any milch animal is affected with any contagious disease and prescribing the precautions to be taken in order to protect milch cattle and milk against infection and contamination;

(18) (a) for the inspection of public and private markets and shops and other places therein;

(b) for the regulation of their use and the control of their sanitary condition;

[1][(c) for licensing and controlling brokers, commission agents, weighmen and measurers practising their calling in markets;]

(19) for prescribing the method of sale of articles whether by measure, weight, tale or piece;

(20) for prescribing and providing standard weights, scales and measures and preventing the use of any others;

(21) for the prevention of the sale or exposure for sale of unwholesome meat, fish or provisions and securing the efficient inspection and sanitary regulation of shops in which articles intended for human food are kept or sold;

(22) (a) for the regulation of burial and burning grounds and other places for the disposal of corpses;

(b) for the levy of fees for the use of such burial and burning grounds and crematoria as are maintained by the council;

(c) for the verification of deaths and the causes of death;

(d) for the period for which corpses must be kept for inspection;

(e) for the period within which corpses must be conveyed to a burial or burning ground, and the mode of conveyance of corpses through public places;

(23) for the registration of births, deaths and marriages;

[2][23-A) for the training and licensing of dhais and midwives;]

(24) for the enumeration of the inhabitants of the city;

(25) for the prevention of dangerous diseases of men or animals;

(26) for the enforcement of compulsory vaccination;

(27) for the prevention of outbreaks of fire;

(28) for the prohibition and regulation of advertisements in public streets or parks;

(29) in general for securing cleanliness, safety and order and the good government and well-being of the municipality and for carrying out all the purposes of this Act.

LEG. REF.

1. This sub-clause was added by S. 125 (iii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. This clause was inserted by S. 125 (iv) ibid.

Sec. 306 (28) : Bye-law authorising levy of licence fees for advertisements—If ultra vires.—The intention of S. 306 (28) is to

Power to give retrospective effect to certain by-laws.

307. By-laws with regard to the drainage of, and supply of water to, buildings and water-closets, earth-closets, privies, ash-pits and cess-pools in connexion with buildings and the keeping of water-closets supplied with sufficient water for flushing may be made so as to affect buildings erected before the passing of the by-laws or this Act.

Penalty for breaches of by-laws.

308. In making a by-law, the Municipal Council may *[Subject to the provisions of clause (1) of Article 20 of the Constitution] provide that a breach thereof shall be punishable—

(a) with fine which may extend to fifty rupees, and in case of a continuing breach with fine which may extend to fifteen rupees for every day during which the breach continues after conviction for the first breach, or

(b) with fine which may extend to ten rupees for every day during which the breach continues after receipt of notice from the [1][executive authority] to discontinue such breach.

Conditions precedent to making by-laws.

[2][309. The municipal council shall, before making or altering by-laws, publish a draft of the proposed by-laws and alterations together with a notice specifying a date at or after which such draft will be taken into consideration, and shall, before making the by-laws or alterations, receive and consider any objection or suggestion which may be made in respect of such draft by any person interested therein before the date so specified.]

Confirmation of by-laws by [3][†(State) Government].

[2][310. (1) No by-law or cancellation or alteration of a by-law shall have effect until the same shall have been approved and confirmed by the [3][†(State) Government.]

(2) Any by-law or cancellation or alteration of a by-law when it shall have been duly confirmed shall be published in the district gazette in English and shall come into operation three months after it has been so publish.]

(Publication of rules, by-laws and regulations.)

Copies of Act, rules and by-laws to be sold at municipal office.

311. Complete copies in English and in a vernacular language of the district—

(a) of this Act,

(b) of all rules framed by the [3][†State Government] under [4][clause (b) of sub-section (2) of section 303], and

---

LEG. REF.

*Inserted by A.A.O. 1950.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. Sections 309 and 310 were substituted for the original by S. 126 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. These words were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

†Substituted by A.L.O., 1950.

4. These words, figures and letter were substituted for the words, figures and letters 'clauses (b) and (c) of S. 303' by S. 127 of the Madras District Municipalities (Amendment) Act, 1930 (Mad. Act X of 1930).

---

empower the Municipality to prohibit altogether advertisements in public streets or parks or to regulate their exhibition, but the section

(c) of all by-laws in force for the time being, shall be kept at the municipal office and shall be sold to the public at cost price.

Publication of regulations.

312. Regulations made by the municipal authorities under this Act shall be published in such manner as the souncil may determine.

CHAPTER XV.

Penalties.

General provisions regarding penalties specified in the schedule.

313. (1) Whoever—

does not confer expressly or impliedly any power on a Municipality to levy licence fees in respect of advertisements. A bye-law framed by a Municipality authorising the levy of by a Municipality authorising the levy of licence fees for advertisements is therefore *ultra vires*, and the contravention of such a bye-law is not an offence for which the offender can be convicted. I.L.R. (1942) Mad. 73=43 C.L.J. 78=1941 M.W.N. 681=54 L.W. 93=A.I.R. 1941 Mad. 749 =(1941) 2 M.L.J. 145.

Sec. 313—Applicability—Offence—What amounts to. See (1957) 2 M.L.J. 637= (1958) M.L.J. (Cr.) 872, cited under S. 250, supra.

See 47 M.L.J. 470. See also 1927 M.W.N. 342, also 1925 M. 186=47 M.L.J. 917=1926 M. 763=50 M.L.J. 557=49 M. 880. There is nothing in the City of Bombay Municipal Act to prevent a police-officer from lodging a complaint in respect of an offence under S. 313-A. The Municipal Commissioner is not the only person empowered to take proceedings in respect of the Act. 36 Bom.L.R. 965=1934 B. 459. Where the chairman of a municipality issued a notice to the respondent under S. 219 (1) calling upon him to remove a dangerous tree and the responndent who failed to comply with this notice was prosecuted under S. 313 (c), held, that the only points for determination in such a case are whether the order under S. 219 (1) is lawful and whether that order has not been complied with. 21 L.W. 280=90 I.C. 152=1925 M. 584. A conviction under S. 221, Punjab Municipal Act, for disobedience of an order passed by the Municipality is bad, when the order is vague and indefinite. 5 P.L.R. 1914=22 I.C. 767. A person aggrieved by a notice falling within the purview of S. 318. U.P. Municipalities Act, can challenge the validity of that notice by way of an appeal to the District Magistrate or other special officer appointed by the Local Government and, if he fails to avail himself of that remedy, no other authority such as a Criminal Court trying a case can question the validity of the notice. (1932 A.L.J. 579. Foll.). 1935 A.L.J. 1260. Where notices are issued under Ss. 186 and 211, U.P. Municipalities Act, but the accused does not avail himself of the remedy provided by the Act, the Magistrate before whom the prosecution is launched is precluded from questioning the legality or the validity of the notices. 138 I.C. 839=1932 A.L.J. 579=1932 A. 673. Where the applicant had challenged the validity of the notice issued against him by the Municipal Board by appealing to the Collector who decided that the notice was a valid one, it is not open to him to re-open that question in a revision application against an order upholding his conviction under S. 307 of the U.P. Municipalities Act for failure to obey the notice. 1935 A.L.J. 971=156 I.C. 950=36 Cr.L.J. 1036 (2). (Per King, C.J. and Srivastava, J. Zia-ul-Hasan, J., dissenting).—The answer to the question whether a Criminal Court can, in a prosecution under S. 307 of the U.P. Municipalities Act, for failure to obey a notice issued by Municipal Board under S. 186 of that Act, go into the question of the legality, validity and reasonableness of the notice, depends on whether the District Magistrate has, or has not, made an appellate order under S. 318. If he has, then the answer to the question is in the negative. If he has not, then the trying Magistrate may decide (if the question is raised) whether the notice is a notice which has been given by the Board under S. 186 or a nullity. If he find that the notice was given by the Board under S. 186 then he is precluded by S. 321 from from trying its legality, validity or reasonableness. The obvious interpretation of S. 321 is that an order made by a Municipal Board under S. 186 can be questioned only by means of an appeal to the District Magistrate. 155 I.C. 344=1935 O.W.N. 509=1935 O. 337 (F. B.); 11 O.W.N. 1622=1935 O. 197. The failure to comply with a notice issued by the committee does not constitute an offence under S. 153 of the Punjab Municipal Act. It is only the failure to comply with the Magistrate's order which is punishable under that section. 152 I.C. 1036=1934 L. 619. A notice under S. 137 of the Bombay Municipalities Act is not invalid merely because the chief officer empowered by the rules and not the chairman of the standing committee has signed it. Per Broomfield, J.—The

(a) contravenes any provision of any of the sections or rules specified in the first column of Schedule VII, or

(b) contravenes any rule or order made under any of the specified sections or rules, or

(c) fails to comply with any direction lawfully given to him or any requisition lawfully made upon him under or in pursuance of the provisions of any of the said sections or rules,

shall on conviction be punished with fine which may extend to the amount mentioned in that behalf in the fourth column of the said schedule.

---

defect in the notice would merely be a defect of form and will not vitiate the same. 32 Bom.L.R. 757=127 I.C. 193=1930 B. 352. Where the building of thara (platform) is sanctioned by the Municipal Committee on the site belonging to the owner but it is built on the street, it must be deemed to have been built on the street without the written permission of the Committee. The Act authorises the Committee to issue a notice requiring the owner to remove the encroachment and the failure to comply with such a notice renders the owner liable to prosecution. 35 P.L.R. 355=1934 L. 447. Where there was a bona fide dispute between the Municipal Committee and the accused as regards the ownership of a certain site and it was doubtful whether the Municipal Committee could direct its contractor to pave the disputed land and thus constitute him a person legally authorized under S. 221, Punjab Municipalities Act, and on the contractor proceeding to pave the site the accused told him that it was their property and should not be paved: Held, that the accused were not guilty of offence under S. 221. 1935 Pesh. 16. It is doubtful whether the owner of a house, who is doing his best to get rid of a disorderly tenant, can properly be fined under S. 153 of the Punjab Municipal Act. 152 I.C. 1036=1934 L. 619. The permission to instal a flour mill granted to the petitioner was suspended by the Collector on 3—6—1929 and the petitioner was charged with having disobeyed that order and run the machinery from 24—6—1929 to 19—10—1929, not only under Ss. 250 and 313 but also under Sch. VIII and for this purpose the offence was split into periods of a day. Held, the charge under Sch. VIII was not sustainable in the absence of a previous conviction under S. 313 before 24—6—1929, that in such case the accused can be convicted in respect of the same machine for the one act of installation only, that the theory of a daily offence was entirely misconceived as also the splitting of a day. The petitioner could only have been charged in one case for the full period within the knowledge of the complainant. 1931 M.W.N. 517.

Licence for old cart-stand—Failure to comply with conditions—If contravention of S. 270-E—Conviction—Substainability. See (1943) 1 M.L.J. 247.

Prosecution for keeping hotel without licence—Validity of order refusing to renew licence—If can be gone into—Acquittal on ground that order of refusal is not valid—Sustainability. See 1941 M.W.N. 1073 (2).

In a case where a person is prosecuted for carrying on an industry or trade for which a licence to do so has been refused, it is open to the Court to find out whether the order of the Statutory Body was made without jurisdiction; whether on the face of it the order is illegal or whether it is unreasonable, revolting or repugnant to conscience. But where the order is in the legitimate exercise of juridiction vested in the Statutory Body and passed bona fide after considering the evidence before it, even if the order is wrong on the merits, the Court cannot hold that it is wrong. It is not the function of the Court to substitute its judgment as an appellate authority for that of the Statutory Body. In cases where the party pleads that no licence is necessary, it is one of jurisdiction. But where the plea is that even though a licence is necessary it has been refused on the merits, the plea cannot be considered as one involving jurisdiction at all. (1949) 1 M.L.J. 488. (Caselaw discussed.) The action of Municipality in refusing the licence to run an oil mill on the ground that the premises are situated in a residential area cannot be said to be without jurisdiction. Further, where the party aggrieved has not availed himself of the remedy of filing a suit for injunction or resorting to one of the prerogative writs allowed by the law, it is not open to him to contend, when he is prosecuted for running an oil mill after a licence to run it has been refused, that the licence should have been given to him and that the order of the executive authority is wrong on the merits. 62 L.W. 293=(1949) 1 M.L.J. 488 (F.B.).

Sec. 313—*Sentence*—Conviction for contravention of S. 249—Omission to impose fine—Legality. On a conviction under Ss. 249, 313 and 338, the Magistrate is bound to impose a fine on the accused under S. 313 (i). The omission to do so is an illegality. (1955) 1 M.L.J. 188.

Sentence of fine only—Legality.—See (1957) 2 M.L.J. 23=(1958) Mad. 82=70 L.W. 599=1957 Cr.L.J. 142=1957 Mad. 771=(1958) M.L.J. (Cr.) 470.

Section 249 of the Madras District Municipalities Act makes it clear that an omnibus publication of the existing purposes at a a particular time will not be sufficient compliance with the statute because the words used are 'any one or more of the purposes specified in Schedule V'. This shows that it is open to the Municipality at a particular time to prohibit the use of any place within the area mentioned in the section for the carrying on of any business or more than one business or all the businesses mentioned in Schedule V. It cannot be said that when once the Municipality has stated that one or more of the purposes mentioned in Schedule V cannot be carried on without a licenee, it is tantamount to saying that such a publication should enure even if the purposes mentioned in the Schedule have been increased by the addition of fresh purposes or decreased by the reduction of certain purposes mentioned therein. Where the original notification is amended, the amendment should also be published in the official Gazette and the original notification cannot be relied upon as sufficient compliance with the requirements of section 249. 1948 M. W. N. 408=A. I. R. 1948 Mad. 479=(1948) 1 M.L.J. 418.

It is open to a person to raise by way of defence in a trial before a Magistrate under S. 391, Bengal Municipalities Act that the Corporation has no authority to refuse licence though it may be more appropriate to do so in a civil declaratory action or by a writ of mandamus. 60 C. 689=37 C.W.N. 344=1933 C. 243. A person who contravenes a by-law by making a construction cannot be deemed to have been given sanction for that construction. 161 I.C. 443=1936 A. W. R. 31. S. 148, Burma Municipal Act specifically provides for the punishment of the offences therein referred to, and those offences relate to breaches of "any of the sections, sub-sections or clauses of the Act mentioned in Col. 1 of the following table of any rule or bye-law made thereunder" and as S. 142 is omitted from Col. 1 of the following table a breach of a bye-law duly passed under S. 142 (c) is not an offence punishable under S. 148. 11 R. 182=144 I.C. 159=1933 R. 68. Where a bye-law provides no penalty for its breach, a person committing breach of the bye-law cannot be convicted and fined: 1935 L. 943. S. 155, U.P. Municipalities Act is not sufficiently comprehensive to justify the conviction of the proprietor as such of the firm to which dutiable articles are consigned, unless it is shown by evidence that the proprietor of the firm himself introduced or did some act amounting to abetment of introduction within the limits of the Municipality goods on which duty should have been paid. 160 I.C. 1035=1936 A.L.J. 191=1936 A. 88. It is an essential ingredient of an offence under S. 155 of the U.P. Municipalities Act, that there should be importation of goods which are liable to the payment of octroi. If the goods imported are exempt from liability to octroi, it is no offence under the section. The complainant must therefore satisfy the Court that the accused has introduced or attempted to introduce or abetted the introduction of any goods, or animals "liable to the payment of octroi" unless this condition is satisfied, there is no offence and there can be no conviction. 57 A. 648=1935 A. L. J. 68=1935 A. 28. Held, that the period of six months within which a prosecution has to be brought is in the case of a continuing offence to be computed from the commencement of the offence when it came to the notice of the Municipality. 32 Bom.L.R. 768=127 I.C. 181=1930 B. 340. An order imposing a daily fine from the date of conviction is illegal. The proper course is to institute further prosecution and allow the accused as opportunity of defending himself before the further fine is imposed. But while the infliction of the fine after the date of the conviction cannot be allowed, the words "continuing breach" in S. 219 empower the Magistrate to impose a daily fine to the date of the compliance or to the date of conviction whichever may first occur. 35 P.L.R. 355=1934 L. 447. Under S. 307 where a person fails to comply with a notice to remove certain constructions, a recurring fine should not be imposed at the time of the first conviction itself. Before a recurring fine is imposed, the offender must be 'proved' to have persisted in the offence. 137 I.C. 513 (2)= 1932 A.L.J. 154=1932 A. 109. Held, that the failure to remove a building in respect of which a person has been convicted under S. 123 (7) or 118 (4), Bombay Municipalities Act is not "a continuing contravention" within the meaning of those sections and is not punishable. The expression is apparently meant to apply to further construction of a building after the first beginning. 32 Bom.L.R. 768=127 I.C. 181=1930 B. 340. "Continuing contravention"—Meaning—Failure to remove building for which eviction took place—Whether punishable. 32 Bom. L.R. 768=1930 B. 340. S. 307 (b), U. P. Municipalities Act is applicable only to a case of a continuing breach, where the offender is proved to have persisted in the offence. Obviously the conviction for such offence must be on account of an offence which has already been committed. For such an offence, therefore, a second prosecution would be necessary. 159 I.C. 513=1935 A.L.J. 1101 =1935 A. 986. The omission to name the place of offence in a summons is a material irregularity. 36 C. W. N. 132.

(2) Whoever after having been convicted of—

(a) contravening any provision of the sections or rules specified in the first column of Schedule VIII, or

(b) contravening any rule or order made under any of the specified sections or rules, or

(c) failing to comply with any direction lawfully given to him or any requisition lawfully made upon him under or in pursuance of any of the said sections or rules,

continues to contravene the said provision or to neglect to comply with the said direction or requisition, as the case may be, shall on conviction be punished for each day after the previous date of conviction during which he continues so to offend, with fine which may extend to the amount mentioned in that behalf in the fourth column of the said schedule.

Explanation.— The entries in the third column of Schedules VII and VIII headed 'subject' are not intended as definitions of the offences described in the sections, sub-sections or clauses mentioned in the first and second columns or even as abstracts of those sections, sub-sections or clauses, but are inserted merely as references to the subject of the sections, sub sections or clauses as the case may be.

Penalty for acting as councillor, chairman or vice-chairman when disqualified.

[1][314. (1) Whoever acts as a membetr of a municipal council knowing that under this Act or the rules made thereunder he is not entitled or has ceased to be entitled to hold such office shall, on conviction, be punished with fine not exceeding two hundred rupees for every such offence.

(2) Whoever acts as or exercises the functions of the chairman or vice-chairman of municipal council knowing that under this Act or the rules made thereunder he is not entitled or has ceased to be entitled to hold such office or to exercise such functions shall, on conviction, be punished with fine not exceeding one thousand rupees for every such offence.

(3) If the chairman or vice-chairman of a municipal council fails to hand over any documents of, or any moneys or other properties vested in, or belonging to, the municipal council which are in or have come into his possession or control, to his successor in office or other prescribed authority, in every case as soon as his term of office as chairmin or vice-chairman expires and in the case of the vice-chairman also on demand by the chairman, such chairman or vice-chairman shall, on conviction, be punished with fine not exceeding one thousand rupees for every such offence.]

LEG. REF.

1. This section was substituted by S. 128 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

The mere fact that the accused in a prosecution under S. 155, U.P. Municipalities Act, has not sought the easier remedy of appealing to the District Magistrate under S. 164 of the Act would not compel the Criminal Court to convict him in the face of an express exemption under the Act. It is open to the Criminal Court to enquire into the question whether the goods are really liable to the payment of octroi, though the accused has not appealed. S. 164 would more appropriately apply to the cases where the goods are detained by the Municipal authorities or where octroi duty has been paid which the importer thinks is in excess of what he was bound to pay. 57 A. 648=1935 A. L.J. 68=1935 A. 28. The District Magistrate exercising powers under S. 318. U. P. Municipalities Act 1916, is not a Court subordinate to the High Court and no revision lies. 140 I.C. 123=1932 A.L.J. 816=1932 A. 651. Where a Municipality, after calling on the guardian and manager

Penalty for acquisition by municial officer of interest in contract or work.

315. If any municipal officer or servant knowingly acquires, directly or indirectly, by himself or by a partner or employer or servant, any personal share or interest in any contract or employment with, by, or on behalf of the municipal council, he shall be deemed to have committed an offence under section 168 of the Indian Penal Code:

Provided that no person shall, by reason of being a shareholder in, or member of, any company, be held to be interested in any contract entered into between such company and the council, unless he is a director of such company:

[1][Provided further that nothing in this section shall apply to a teacher employed by a municipal council who, with the sanction of the *[State Government] enters into a contract with the municipal council with regard to the utilization for the purpose of a school of any land or building owned by him or in which he has a share or interest.]

Penalty for omission to take out licence for vehicle or animal.

316. (1) Every owner or person in charge of any vehicle or animal liable to tax under section 98 who omits to obtain a licence shall on conviction be punished with fine not exceeding fifty rupees and shall also pay the amount of the tax payable by him in respect of such vehicle or animal.

(2) On payment of such fine and tax and of such costs as may be awarded, such owner or person shall receive a licence for the vehicle or animal in respect of which he has been fined and for the period during which he has been found to be in default.

(3) The provisions of this section shall apply to any person who, having compounded for the payment of a certain sum under section 101, fails to pay such sum, and the amount due for a licence shall in such case be taken as the amount so compounded for.

Penalty for unlawful building.

317. If the construction or re-construction of any building or well—

(a) is commenced without the permission of the [2][executive authority]; or

---

LEG. REF.

1. This proviso was added by S. 129 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

*The words "Provincial Government" were substituted for "Local Government" by A.O., 1937, and for the word "Provincial" the word "State" was substituted by A.L.O., 1950.

2. These words were substituted for the word "chairman" by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

---

of the estate of a lunatic to submit a return showing the income for profession-tax levy and overruling his return stating that he was not liable to pay profession tax for the estate, launches a prosecution against him for non-payment of profession tax, it is incumbent on the prosecution to establish affirmatively that profession tax was legally leviable from the accused. It is open to the accused in such a prosecution to plead in defence and to prove, notwithstanding the Municipal Council's decision against him to the contrary, that he is not liable to pay the tax and therefore not liable to prosecution under R. 30, Cl. (2) of Sch. IV of the Act. 38 Cr.L.J. 464=A.I.R. 1937 M. 291=(1937) 1 M.L.J. 274. On this section see also 1942 Mad. 275=1942 M.W.N. 1073; 1935 M.W.N. 592.

Sec. 317.—[See also Notes under S. 313, supra.] See 1948 Mad. 466=49 Cr. L.J. 682=(1947) 1 M.L.J. 199.

Illustrative Cases.—A person was convicted for constructing an overhanging balcony without permission of the Muni-

(b) is carried on or completed otherwise than in accordance with the particulars on which such permission was based, or

(c) is carried on or completed in contravention of any lawful order or in breach of any provision contained in this Act or in any rule or by-law made hereunder or of any direction or requisition lawfully given or made, or

if any alterations or additions required by any notice issued under section 205 or section 215 are not duly made, or

if any person to whom a direction is given by the [1][executive authority] to alter or demolish a building or well under section 216 fails to obey such direction.

the owner of the building or well or the said person, as the case may be, shall be liable on conviction to a fine which may extend in the case of a building to five hundred rupees and in the case of a well or hut to fifty rupees, and to a further fine which may extend in the case of a building to one hundred rupees, and in the case of a well or hut to ten rupees, for each day during which the offence is proved to have continued after the first day.

LEG. REF.

1. See foot-note 2 at page 210.

cipality and sentenced to fine of Rs. 50 and to pay Re. 1 per day for the time the balcony remains undemolished. In revision, it was held that the order for demolition and the fine for prospective disobedience were bad. The accused still persisted in disobeying the Municipality's notice to remove the offending balcony. Then the Municipality prosecuted him and had him fined Rs. 50 for disobedience and Rs. 2 for every day of his disobedience till judgment. Held, that the subsequent prosecution was not bad on any principle of *autre fois acquit*. 119 P.L.R. 1915 =30 I.C. 157. A person who has been tried once for building a house without sanction of the Municipality and acquitted cannot be tried again for the same offence on the ground that the house continues to stand and thus constitutes a continuous offence. 18 Cr. L. J. 324=38 I.C. 436. Effecting some crude repairs to the existing walls does not amount to erection or re-erection. It does not, therefore, require the sanction of the Municipal Committee and a conviction under S. 219 for not having obtained the sanction is bad and illegal. 33 P.L.R. 1041=1933 L. 85. The accused erected certain projections overhanging a public street without the permission of the Municipal Committee. The Committee issued a notice for their removal. The accused removed all the projections with the exception of one which was about nine inches in width. The Committee thereupon prosecuted the accused. The Trial Magistrate ordered that the accused should pay a penalty of Rs. 5 and that the projection should be allowed to remain intact. Held, that the order was without jurisdiction and not sustainable. 25 Cr.L.J. 373=77 I.C. 421 =1923 L. 686. Effect of failure to comply with notice for demolition of building, see 116 I.C. 908=1929 L. 566.

Sec. 317, *cls.* (a) *and* (c).—Where it was found that part of the alleged reconstructions had already been done on the date of the offence, held, (1) that there was no commencement on that date and that no conviction under S. 317 (*a*) could be sustained; (2) that S. 317 (*c*) could not apply to the case as there was no order prohibiting the completion of the building; (3) that the Court should apply the definition of "reconstruction" as given in S. 3 (24) of the Act in proceeding under S. 317. 25 L. W. 475=100 I.C. 375=1927 M. 442.

Sec. 317 (*c*): *Construction or re-construction of a building without express permission—When offence.*—Under S. 199 of the Madras District Municipalities Act, a construction or re-construction of a building should not be begun unless and until the executive authority has granted permission for the execution of the work. S. 201 requires that within 30 days after the receipt of an application for permission to construct or reconstruct a building the executive authority should either grant the same or refuse it on one or more of the grounds mentioned in S. 203. Under S. 202 the applicant is entitled if permission has not been granted within the 30 days mentioned in S. 301 to make a written request to the council and on receiving such a request the council is bound to determine by written order whether such approval or permission should be given or not. The applicant has after putting in the written request to the council to wait for one month longer to give time to the council to make the decision; but after the expiry of that one month, such approval or permission would be deemed to have been given if the council has not within one month determined whether such approval or per-

Notice to scavengers before discharge.

318. (1) In the absence of a written contract to the contrary, every scavenger employed by the municipal council shall be entitled to one month's notice before discharge or to one month's wages in lieu thereof, unless he is discharged for misconduct or was engaged for a specified term and discharged at the end of it.

Penalty for withdrawal of scavengers without notice.

(2) Should any scavenger employed by the council, in the absence of a written contract authorizing him so to do and without reasonable cause, resign his employment or absent himself from his duties without giving one month's notice to the council, or neglect or refuse to perform his duties, or any of them, he shall be liable on conviction to a fine not exceeding fifty rupees or to imprisonment of either description which may extend to two months.

Application of sub-sections (1) and (2) to other municipal servants.

(3) The [1][State Government] may, by notification, direct that, on and from a date to be specified in the notification, the provisions of sub-sections (1) and (2) with respect to scavengers shall apply also to any specified class of municipal servants whose functions intimately concern the pulic health or safety.

Wrongful restraint of executive authority and his delegates.

319. Every person who prevents the [2][executive authority] or any person to whom the [2][executive authority] has lawfully delegated his powers of entering into or on any land or building, from exercising his lawful power of entering thereinto or thereon shall be deemed to have committed an offence under section 341 of the Indian Penal Code.

LEG. REF.

1. The words "Provincial Government" were substituted for "Local Government" by A.O., 1937 and for the word "provincial" the word "State" was substituted by A.L.O., 1950.

2. *Vide* foot-note 2, p. 210, *supra*.

---

mission should be given or not and in such a case the applicant is entitled to proceed to execute the work. But even then he should do so without contravening the provisions of the Act or any by-laws made under the Act. Reading Ss. 197, 199, 201 and 202 together, it is clear that the applicant cannot carry out or complete any construction or re-construction of a building within at least a period of six days after the date of his application, and if he does so, he commits an offence under S. 199 read with S. 317 (*c*) of the Act. Where the applicant did not make any written request at all to the Council and he did not even choose to wait for the period of sixty days, he will be guilty of an offence under S. 317 (*c*) of the Act if he carries out the work without the express permission of the executive authority. 1948 Mad. 466=60 L. W. 198 =1947 M.W.N. 215=(1947) 1 M. L. J. 199. *See also* 1944 Mad. 476=(1944) 2 M.L.J. 44.

Secs. 317 *and* 341—Under S. 216 of the Act the owner has the right after service on him of the provisional order to show cause within the prescribed time why the order should not be confirmed. It is only after the expiry of the prescribed time and on failure of the owner to show satisfactory cause that the provisional order can be confirmed and it follows that an offence can be found to be committed only after the passing of the confirming order and its service upon the owner. From the language of section 317 it is clear that it is the final or confirming order passed under S. 216 (3) and not the provisional order under sub-Ss. (1) and (2) of S. 216 that is contemplated as providing the starting point of limitation for the commencement of prosecution. Hence, a charge-sheet filed within three months of the service of the final order would be within the period of limitation prescribed by S. 347 of the Act. 61 L.W. 433=1948 M.W.N. 677= A.I.R. 1948 Mad. 470=49 Cr. L.J. 703= (1948) 1 M. L. J. 413. *See also* 1944 Mad. 476= (1944) 2 M.L.J. 44.

Sec. 318.—By a 'reasonable cause'' the sub-S. (2) would include illness or festivities, such as marriage in the family of a sweeper and not a strike. Therefore a sweeper who strikes work acts without reasonable cause and is liable even if he gives notice. 158 I.C. 1116=1935 A.L.J. 297= 1935 A. 216.

Sec. 319.—Where an accused resists the unlawful act of a distraining officer (as

Penalty for not giving or giving false information.

320. If any person who is required by the provisions of this Act or by any notice or other proceedings issued under this Act to furnish any information—

(a) omits to furnish it, or

(b) knowingly or negligently furnishes false information, such person shall be liable to a fine not exceeding Rs. 100.

PART VI.

CHAPTER XVI.

Procedure and Miscellaneous.

Licences and permissions.

General provisions regarding licences and permissions.

321. (1) Every licence and permission granted under this Act or any rule or by-law made under this Act shall specify the period, if any, for which, and the restrictions limitations, and conditions subject to which the same is granted, and shall be signed by the [1][executive authority].

[2][(2) Save as otherwise expressly provided in or may be prescribed under this Act, for ever such licence or permission, fees may be charged on such units and at such rates as may be fixed by the municipal council.]

[(3) The council may

(a) place the collection of such fees under the management of such persons as may appear to it proper; or

(b) farm out such collection for any period not exceeding three years at a time and on such terms and conditions as it may think fit]; (Substituted by Madras Act XXXVIII of 1942).

LEG. REF.

1. These words were substituted for the word "chairman" by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. This sub-section was substituted by S. 130 (*i*) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

---

an attempt to take the front door of a house), he cannot be said to have exceeded his right of private defence and so is not liable under S. 332, I. P. Code. 1930 M. 430=58 M. L. J. 193. See also 13 M. 518.

Sec. 321.—A Municipality has an absolute discretion to refuse to grant licence. 2 L.W. 368=28 I.C. 709. (28 M. 520, *Doubted.*) The chairman can cancel the licence under S. 321 (5) of the District Municipalities Act only for the contravention of any of its terms and it is not open to him to cancel the licence for any reason that he thinks proper. Where the chairman cancelled the licence of a coffee hotel-keeper on the ground that he had failed to pay the water tax, *held,* that the cancellation of the licence was *ultra vires.* 51 M. 876=1928 M. 847=55 M.L.J. 566. Apart from the permission which is required for the construction or reconstruction there is nothing else left to be done by the owner of a building who puts up one of the things mentioned in S. 195. Thus after obtaining permission he is under no obligation to obtain a licence from year to year and S. 321 of the Act has no application to such cases. 51 M. 870=1928 M. 846=54 M. L.J. 642. Where the prohibition against preparing bricks and tiles without a licence are not extended to a particular Municipality the prohibitive sections do not apply to that Municipality and it is not necessary to obtain a licence for using a place therein for preparing bricks and tiles. 143 I.C. 285=34 Cr.L.J. 549=1933 C. 347. The Municipal Committee are legally entitled to attach a condition to the licence given to dealer or firewood restricting the amount that he can deposit. 158 I.C. 944=1935 L. 676.

Sec. 321 (2)—"*Fee*"—*Meaning of.*—The general rule of construction is that words and expressions occurring in a statute must

be given the same meaning throughout the statute, unless there is something repugnant in the subject or context. The words "fee" and "tax" occurring in the various sections of the Madras District Municipalities Act have different meanings, and "fee" in S. 321 (2) has he same meaning as is given to that word in Chap. XII of Part IV, (1957) Cut. 388=23 Cut. L.T. 445=1957 Orissa 285.

Tax and fee—Distinction—The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is a payment for a special benefit or privilege. A fee is regarded as a sort of return for services rendered. It is absolutely necessary that the levy of fee should, on the face of the legislative provision be correlated to the expenses incurred in rendering the services. Under S. 321 (2), the fee is levied for the purpose of controlling encroachments on public streets by the issue of licences; it should not be merged in the general revenues but must be correlated to the expenses of regulating the encroachments where the municipality levies a tax under the guise the levying fees, it is beyond its powers, as such a power of taxation is not derived from S. 321, and it should therefore be declared *ultra vires*, *ibid*.

Licence fee—Reasonableness—Ultra vires *levy*.—A license fee for carrying on a particular trade or industry should not be regarded as a form of taxation the extent of which is to be governed purely by revenue considerations. The license-fee should bear as nearly as possible a relation to the cost of issuing the license and the cost of supervising the trade or of any special measures rendered necessary by the character of the trade. It is doubtful whether a Municipality would be justified in increasing the license fee chargeable upon a particular industry merely because of the cost of ordinary municipal services to which that industry is entitled by virtue of its position as a tax payer in the Municipality. But if the industry involves special sanitary precautions, a special supervising agency or such like expenditure, it is reasonable to take this expenditure into account in fixing the amount of the fee. So long as the apportionment is made on a reasonable basis it is not for the Courts to interfere with the way in which it has been achieved. The matter is within the competence of the Municipal Council which is of course always subject to the control of the Government; and the Courts certainly should not declare a fee or a levy tó be *ultra vires* merely because it is somewhat higher than might be thought necessary on a different view of the facts. I.L.R. (1943) Mad. 521=207 I.C. 391 =1942 M.W.N. 714=55 L.W. 783=A.I.R. 1943 Mad. 191=(1942) 2 M.L.J. 663. The fee charged for licences should be commensurate with the extra costs entailed by granting the license and exercising such supervision as may be necessary to see that its terms are complied with. It should not be so assessed as substantially to contribute to the general revenues of the Municipality. Whether a fee is or is not unreasonable depends on the facts of each case. Where the fees charged by the Municipal Council in respect of other licences did not exceed Rs. 30 and ordinarily ranged between Rs. 5 and Rs. 20 for such processes as making fish oil, burning bricks, storing manure, etc., a fee of Rs. 100 for storing so inoffensive an article as groundnut is so disproportiate as to betray a policy of unfair discrimination not justified either by the letter or the spirit of section 321 (2) of the Act. It is therefore *ultra vires*. 130 I.C. 750=1931 M. 497=61 M.L.J. 748. By-laws for regulation of meat trade—Applicability to areas outside Municipal limits—Power of Municipal Board to demand licence fee. 158 I.C. 919=1935 A. 903. Power of Municipality to levy licence fees apart from tax. *See* 1934 A.L.J. 244=149 I.C. 11=1934 A. 497.

Sec. 321 (11).—Applicability.. *See* (1958) 1 An.W.R. 156=(1958) M.L.J. (Cr.) 120, cited under S. 250, supra.

Sec. 321 (11)—*Construction—"Save as otherwise specially provided in this Act"*. —Delay in granting trading licence—Effect. —S. 269—If special provision excluding S. 321 (11). A person trading in mutton applied for a licence for the period 17|11|1947 to 31|3|1948. The Municipality refused the application on 26|3|1948, more than 30 days after its receipt. The applicant was prosecuted for having traded without licence.

Held, that the case was governed by S. 321 (11), and by reason of the failure of the Municipality to intimate their refusal within 30 days the licence must be deemed to have been granted. There could therefore be no prosecution for the carrying on of any trade during the period in question though the licence was subsequently refused. There was no specific provision in the Act contrary to what was laid down in S. 321 (11) which could take the case out of the operation of S. 321 (11). The general provision relating to the granting of licences and the prohibition of trade with licence, contained in S. 269 of the Act cannot be regarded as a special provision which would exclude S. 321 (11). (1954) 2 M.L.J. 217. Statutes like the Madras District Municipalities Act authorise persons to do acts for the benefit of others, that is for the public good. This statutory power is coupled with a duty to perform it under relevant circumstances. The fact that the exercise of the power is left to the discretion of the statutory body does not excuse it from discharging its duty. The power must be exercised within the limits to which an honest

[1][(3-A) Every order of a municipal authority granting or refusing a licence or permission shall be published on the notice board of the municipal council.]

(4) Every order of a municipal authority refusing, suspending, cancelling or modifying a licence or permission shall be in writing and shall state the grounds on which it proceeds.

(5) Subject to the special provisions in Chapters X and XII regarding buildings and private markets, and subject to such sanction as may be required for the refusal of a licence or permission, [2][. . .] any licence or permission granted under this Act or any rule or by-law made under it may at any time be suspended or revoked by the [3][executive authority] if any of its restrictions, limitations or conditions is evaded or infringed by the grantee, or if the grantee is convicted of a breach of any of the provisions of this Act, or of any rule, by-law or regulation made under it in any matter to which such licence or permission relates, or if the grantee has obtained the same by misrepresentation or fraud.

(6) It shall be the duty of the [3][executive authority] to inspect places in respect of which a licence or permission is required by or under this Act, and he may enter any such place between sunrise and sunset and also between sunset and sunrise if it is open to the public or any industry is being carried on in it at the time; and if he has reason to believe that anything is being done in any place without a licence or permission where the same is required by or under this Act, or othewise than in conformity with the same, he may at any time by day or night without notice enter such place for the purpose of satisfying himself whether any provision of law, rules, by-laws or regulations, any condition of a licence or permission or any lawful direction or prohibition is being contravened and no claim shall lie against any person for any damage or inconvenience necessarily caused by the exercise of powers under this sub-section by the [3][executive authority] or any person to whom he has lawfully delegated his powers, or by any force necessary for effecting an entrance under this sub-section.

(7) When any licence or permission is suspended or revoked, or when the period for which it was granted, or within which application for renewal should be made, has expired, whichever expires later, the grantee shall for all purposes of this Act or any rule or by-law made under this Act be deemed to be without a licence or permission until the order suspending or revoking the licence or permission is cancelled or, subject to sub-section (11), until the licence or permission is renewed, as the case may be.

(8) Every grantee of any licence or permission shall at all reasonable times, while such licence or permission remains in force, produce the same at the request of the [3][executive authority].

LEG. REF.

1. This sub-section was inserted by S. 130 (ii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. The words 'and to such appeal as may be provided in case of refusal' were omitted by S. 130 (iii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

---

man, competent to discharge his office ought to confine himself, that is within the limits and for the object intended by the legislature. The failure of the authority to do its duty is a clear transgression of the duty imposed by law (1958) 2 An.W.R. 187: 1958 An.L.T. 681.

(9) Whenever any person is convicted of an offence in respect of the failure to obtain a licence or permission or to make a registration required by the provisions of this Act or any rule or by-law made under this Act, the magistrate shall, in addition to any fine which may be imposed, recover summarily and pay over to the municipal council the amount of the fee chargeable for the licence or permission or for registration; [1][and may in his discretion also recover summarily and pay over to the council such amount, if any, as he may fix as the costs of the prosecution].

[2][(9-A) Save as otherwise expressly provided in or may be prescribed under this Act, every application for a licence or permission or for registration or the renewal of a licence or permission or registration, shall be made not less than thirty and not more than ninety days before the commencement of the year or of such less period as is mentioned in the application.]

(10) Such recovery of the fee under sub-section (9) shall not entitle the person convicted to a licence or permission or to registration as aforesaid.]

(11) The acceptance by the municipal council of the pre-payment of the fee for a licence or permission or for registration shall not entitle the person making such pre-payment to the licence or permission or to registration, as the case may be, but only to refund of the fee in case of refusal of the licence or permission or of registration; but an applicant for the renewal of a licence or permission or registration shall until communication of orders on his application be entitled to act as if the licence or permission or registration had been renewed; and save as otherwise specially provided in this Act, if orders on an application for licence or permission or for registration are not communicated to the applicant within thirty days after the receipt of the application by the [3][executive authority] the application shall be deemed to have been allowed for the year or for such less period as is mentioned in the application, and subject to the law, rules, by-laws, regulations and all conditions ordinarily imposed.

Appeals.

Appeals from executive authority to council.

322. (1) An appeal shall lie to the council from—

(*a*) any notice issued or other action taken or proposed to be taken by the [3][executive authority]—

(i) under sections 131, 139, 146, 147, 148, 150, 205 sub-section (1) and sub-section (3), 216. sub-section (3), 218 sub-section (1), 219 sub-section (1), 224 sub-section (1), 226, 236, 246, 247;

(ii) under any bye-law concerning house drainage and the connexion of house drains with municipal drains or house connexions with municipal water-supply or lighting mains; or

---

LEG. REF.

1. These words were added by S. 130 (iv) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. Inserted by Madras Act XXXVIII of 1942.

3. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

Sec. 322.—Omission to appeal against order of Municipal Committee does not deprive the party of his right of suit for an injunction restraining the Committee from

[1][(*b*) any refusal by the [2][executive authority] to approve a building site under section 200; or]

[1][(*c*) any order of the [2][executive authority] granting or refusing a licence or permission;]

[3][(*d*) any order of the [2][executive authority] made under section 321, sub-section (5), suspending or revoking a licence; or

[3][(*e*) any other order of the [2][executive authority] that may be made appealable by rules under section 303.]

(2) The decision of the council on any such appeal shall be final.

Andhra Amendment.

Andhra Act IV of 1956 has substituted the word "connexions" for the words "house connexions" in section 322 (1) (*a*) (ii).

Limitation of time for appeal.

323. In any case in which no time is prescribed by the foregoing provisions of this Act for the presentation of an appeal allowed thereunder, such appeal subject to the provisions of section 5 of the Indian Limitation Act, 1908, must [4][be presented—

(*a*) where the appeal is against an order granting a licence or permission, within thirty days after the date of the publication of the order on the notice board of the municipal council, and

(*b*) in other cases, within thirty days after the date of the receipt of the order or proceeding against which the appeal is made.]

Power to summon.

Power of persons conducting election and other enquiries.

324. All persons authorized by rule to conduct enquiries relating to elections and all inspecting or superintending officers holding any enquiries into matters falling within the scope of their duties shall have for the purposes of such enquiries the same powers in regard to the issue of summonses for the attendance of witnesses and the production of documents as are conferred upon revenue officers by the Madras Revenue Summonses Act, 1869, and the provisions of sections 2, 3, 4 and 5 of that Act shall apply to summonses issued and to persons summoned by virtue of the powers conferred by this section; and all persons to whom summonses are issued by virtue of the said powers shall be bound to obey such summonses.

Summons to attend and give evidence or produce documents.

325. [4][executive authority] may summon any person to attend before him and to give evidence or produce documents, as the case may be, in respect of any question relating to taxation, or inspection, or registration, or to the grant of any licence or permission under the provisions of this Act.

LEG. REF.

1. Clauses (b) and (c), were substituted for original clauses (b), (c), (d) and (e) by section 131 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. Vide footnote (3), p. 216.

3. Original clauses (f) and (g) were relettered as clauses (d) and (e) respectively by section 131, ibid.

4. Theses words and letters were substituted for the words 'be presented within thirty days after the date of receipt of the order or proceeding against which the appeal is made' by S. 132 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

---

taking steps to remove a structure. 51 I. C. 708=62 P.R. 1919.

Sec. 322 (1) (c) and (2): Duty of municipal Council —Appeal against order rejecting application for licence — Municipal Council passing resolution that it did

Notices, etc.

Form of notices and permissions.

326. All notices and permisions given, issued, or granted, as the case may be, under the provisions of this Act must be in writing.

Signature on documents.

327. (1) Every licence, permission, notice, bill, schedule, summons or other document which is required by this Act or by any rule, by-law or regulation made under it to [1][bear the signature of the chairman or executive authority] or of any municipal officer shall be deemed to be properly signed if it bears a [2][facsimile of the signature of the chairman or executive authority] or of such municipal officer, as the case may be, stamped thereon.

(2) Nothing in sub-section (1) shall be deemed to apply to a cheque drawn upon the municipal fund or to any deed of contract entered into by the municipal council.

Publication of notifications.

328. [3][Save as otherwise provided, every notification under this Act other than one issued by the [4][(State) Government], shall be published in the official gazette of the district in which the municipality is situated both in English and in a vernacular language of the district:

[Provided that the [4][(State) Government] shall have power to direct that any such notification—

(i) shall be published in the said gazette either in English or in a vernacular language of the district; or

---

LEG. REF.

1. These words were substituted for the words 'bear the signature of the chairman' by S. 17 (2) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. These words were substituted for the words 'facsimile of the signature of the chairman' by S. 17 (2) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

3. Substituted for the words 'Every notification under this Act' by S. 133 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

4. The words 'Provincial Government' were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word 'Provincial' the word 'State' was substituted by A.L.O., 1950.

---

not like to interfere with jurisdiction of authority — Propriety. Where, on appeal from an order by the authority under S. 322 (c), rejecting an application for the issue of a licence for storing and selling fireworks, the municipal council passed a resolution expressing that they did not like to interfere with the jurisdiction of the proper authority who had discretion either to grant or to refuse licence: Held, that the municipal council which was vested with statutory authority and duty to hear and dispose of appeals from the order, had abdicated its duty by passing the resolution and the rejection of the appeal without considering the merits was improper. (1955) 2 M.L.J. 684=68 L. W. 823=1956 Mad. 181.

As to jurisdiction of civil court, see (1959) 2 An. W. R. 69, cited under S. 197 (1), supra.

Sec. 322 (2).—The word 'final' refers to proceedings before the Corporation and is intended to bar an appeal from the standing committee to the general body of the commissioners and not shut out the jurisdictions of Courts. It is open to the Civil Court to entertain a suit for an injunction against the President restraining him from demolishing a building. 38 Mad. 41=23 M. L. J. 431=16 I.C. 971.

Sec. 326.—A materially defective notice is invalid and of no effect. 8 P.R. 1886 (Cr.). Disobedience of such notice is no offence. (Ibid.) See also 92 P. L. R. 1905=26 P. R. 1905 (Cr.) =2 Cr. L. J. 371; 18 P.R. 1908 (Cr.); 4 P.R. 1894 (Cr.); 1925 Lah. 146 =81 I.C. 122. Service of notice on one co-owner is valid against other co-owners. 41 I.C. 413 (Cal.).

(ii) shall, instead of being published in the said gazette, be published in any other manner specified by them.] (*Added by Madras Act XVIII of* 1944).

Publication of by-laws, notices, orders, etc.

329. Every by-law, order, notice or other document directed to be published under this Act shall, unless a different method be prescribed by this Act, or by the council; be written in, or translated into, the vernacular of the district and deposited at the municipal office, and a copy shall be posted up in a conspicuous position at such office and such other places as the council may direct. And a public proclamation shall be made throughout the municipality by beat of drum that such copy has been so posted up and that the original is open to inspection at the municipal office.

Notice of prohibition or setting apart of places.

330. Whenever the municipal council shall have set apart any place for any purpose authorized by this Act or shall have prohibited the doing of any thing in any place, the [1][executive authority] shall forthwith cause to be put up a notice in English and in a vernacular language of the district at or near such place. Such notice shall specify the purpose for which such place has been set apart or the act prohibited in such place.

Method of serving documents.

331. (1) When any notice or other document is required by this Act, or by any rule, by-law, regulation or order made under it, to be served on, or sent to any person, the service or sending thereof may be effected—

(*a*) by giving or tendering the said document to such person; or

(*b*) if such person is not found, by leaving such document at his last known place of abode or business or by giving or tendering the same to some adult member or servant of his family; or

(*c*) if such person does not reside in the municipality and his address elsewhere is known to the [1][executive authority] by sending the same to him by post registered; or

(*d*) if none of the means aforesaid be available, by *[affixing the same on some conspicuous part] of such place of abode or business.

(2) When the person is an owner or occupier of any building or land, it shall not be necessary to name the owner or occupier in the document, and in the case of joint owners and occupiers it shall be sufficient to serve it on, or send it to, one of such owners or occupiers.

(3) Whenever in any bill, notice [2][from or other document] served or sent under this Act a period is fixed within which any tax or other sum is to be paid or any work executed, or anything provided, such period shall, in the absence from this Act of any distinct provision to the contrary, be calcuated from the date of such service or sending.

LEG. REF.

1. These words were substituted for the word 'chairman' by section 17 (1) of the Madras District Municipalities (Amendement) Act, 1933 (Madras Act XV of 1933).

*Substituted by Madras Act XXV of 1957.

2. These words were substituted for the words 'or form' by S. 134 of Mad. Act X of 1930.

Relation of occupier to owner.

Recovery by occupier of sum leviable from owner.

332. If the occupier of any building or land makes on behalf of the owner thereof any payment for which under this Act, the owner, but not the occupier, is liable, such occupier shall be entitled to recover the same from the owner and may deduct the same from the rent then or thereafter due by him to the owner.

Obstruction of owner by occupier.

333. (1) If the occupier of any building or land prevents the owner from carrying into effect in respect thereof any of the provisions of this Act, the [1][executive authority] may be an order require the said occupier to permit the owner, within eight days from the date of service of such order, to execute all such works as may be necessary.

(2) Such owner shall, for the period during which he is prevented as aforesaid, be exempt from any fine or penalty to which he might otherwise have become liable by reason of default in executing such works.

Execution of work by occupier in default of owner.

334. If the owner of any building or land fails to execute any work which he is required to execute under the provisions of this Act or of any rule, by-law, regulation or order made under it, the occupier of such building or land may, with the approval of the [1][executive authority], execute the said work, and shall be entitled to recover from the owner the reasonable expenses incurred in the execution thereof, and may deduct the amount thereof from the rent then or thereafter due by him to the owner.

[2][*Powers of entry and inspection of the executive authority*].

Power of entry to inspect, survey or execute the work.

335. The [1][executive authority] or any person authorized by him in this behalf may enter into or on any building or land with or without assistants or workmen in order to make any inquiry, inspection, test, examination, survey, measurement or valuation or for the purpose of lawfully placing or removing pipes or meters, or to execute any other work which is authorized by the provisions of this Act or of any rule, by-law, regulation or order made under it, or which it is necessary for any of the purposes of this Act or in pursuance of any of the said provisions, to make or execute:

Provided that—

(*a*) except when it is in this Act otherwise expressly provided, no such entry shall be made between sunset and sunrise;

(*b*) except when it is in this Act otherwise expressly provided, no dwelling-house, and no part of a public building used as a dwelling place shall be so entered without the consent of the occupier thereof, unless the said occupier has received at least six hours' previous notice of the intention to make such enty;

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. These words were substituted for the words 'Chairman's powers of entry and inspection' by S. 17 (2) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

(c) sufficient notice shall be given in every case even when any premises may otherwise be entered without notice, to enable the inmates of any apartment appropriated to women to remove to some part of the premises where their privacy may be preserved;

(d) due regard shall be paid, so far as may be compatible with the exigencies of the purpose of the entry, to the social and religious usages of the occupants of the premises.

Power of entry on lands adjacent to works.

336. (1) The [1][executive authority] or any person authorized by him in this behalf may with or without assistants or workmen enter on any land adjoining or within fifty yards of any work authorized by this Act or by any rule, by-law, regulation or order made under it, for the purpose of depositing on such land any soil, gravel, stone or other materials, or of obtaining access to such work, or for any other purpose connected with the carrying on thereof.

(2) The [1][executive authority] or person authorized by him as aforesaid shall, before entering on any land under sub-section (1), give the owner or occupier three days' previous notice of the intention to make such entry and state the purpose thereof, and shall, if so required by the owner or occupier, fence off so much of the land as may be required for such purpose.

(3) The [1][executive authority] shall not be bound to make any payment, tender or deposit before entering on any land under sub-section (1), but as little damage as may be shall be done and the [1][executive authority] shall pay compensation to the owner or occupier of the land for such entry and for any temporary or permanent damage that may result therefrom.

(4) If such owner or occupier is dissatisfied with the amount of compensation paid to him by the [1][executive authority] he may appeal to the council.

Inspection and stamping of weights and measures.

337. The [1][executive authority] or any person authorized by him in this behalf may examine and test the weights and measures used in markets and shops in the municipality with a view to the prevention and punishment of offences relating to such weights and measures under Chapter XIII of the Indian Penal Code.

Power to enforce licensing provisions, orders, etc.

Consequences of failure to obtain licences, etc., or of breach of the same.

338. If, under this Act, or any rule, by-law or regulation made under it, the licence or permission of the council or [1][executive authority] or registration in the municipal office is necessary for the doing of any act, and if such act is done without such licence or permission or registration. or in a manner inconsistent with the terms of any such licence or permission, then—

(a) the [1][executive authority] may by notice enquire the person so doing such act to alter, remove, or as far as practicable, restore to its original state the

LEG. REF.

1. Vide footnote 1 at page 220, supra.

Sec. 338.—Applicability — Unauthorised construction of building—Chap. X of the Act contains Building Regulations. That being so, the Municipality cannot have recourse to S. 338 with respect to contraventions of those Regulations. Reference may be drawn to Ss. 205 and 216 of Ch. X and to S. 313, in Ch. 15. The municipality is not therefore justified in seeking to proceed against anyone under S. 338 for any unauthorised construction of a building or part thereof. (1958) M.L.J. (Crl.) 153=1958 K.L.T. 116=1958 Cr.L.J. 1186=1958 Ker.L.J. 194=1958 Kerala 279.

whole or any part of any property, movable or immovable, public or private, affected thereby, within a time to be specified in the notice; and further,

(*b*) if no penalty has been specially provided in this Act for so doing such act, the person so doing it shall be liable on conviction before a magistrate to a fine not exceeding fifty rupees for every such offence.

Time for complying with order and power to enforce in default.

339. (1) Whenever by any notice, requisition, or order under this Act, or under any rule, by-law or regulation made under it, any person is required to execute any work or to take any measures or do anything a reasonable time shall be named in such notice, requisition or order within which the work shall be executed, the measures taken, or the thing done.

(2) If such notice, requisition, or order is not complied with within the time so named the [1][executive authority] may cause such work to be executed or may take any measures or do anything which may, in his opinion, be necessary for giving due effect to the notice, requisition or order as aforesaid; and further,

(3) if no penalty has been specially provided in this Act for failure to comply with such notice, the said person shall be liable on conviction before a magistrate to a fine not exceeding fifty rupees for every such offence.

Recovery of expenses from persons liable and limitation of liability of occupier.

340. (1) The [1][executive authority] may, subject to the provisions of [2][section 139], recover any reasonable expenses incurred under section 339 from the person or any one of the persons to whom the notice, requisition or order was addressed, and may, in executing work or taking measures under section 339, utilize any materials found on the property concerned or may sell them and apply the sale-proceeds in or towards the payment of the expenses incurred.

(2) If the person to whom notice is given, is the owner of the property in respect of which it is given, the [1][executive authority] may (whether any action or other proceeding has been brought or taken against such owner or not) require the person, if any, who occupies such property, or any part thereof, under the owner, to pay to the municipal council, instead of to the owner, the rent payable by him in respect of such property, as it falls due, up to the amount recoverable from the owner under sub-section (1) or to such smaller amount

---

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. This word and figures were substituted for the words and figures 'Sections 139 and 155' by section 135 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

Sec. 338.—A rice mill is a machinery likely to be dangerous to human life within Sch. V (q) of the Act and the use thereof without licence is punishable under S. 249 and S. 338. 50 M. 845=1927 M. 602=52 M.L.J. 653. The carrying on of a hotel-keeper's business without licence is an offence punishable under S. 338. Where however a person had a licence and the same was illegally cancelled by the chairman and the licensee all the same carried on his business and was prosecuted held, that the cancellation having been ultra vires, the Court could take notice of the same and dismiss the criminal charge. In order to sustain a conviction under S. 338 it must be shown that the accused violated a legal order. Distinction between cases of refusal and cancellation of the license. A. I. R. 1928 Mad. 847=55 M.L.J. 566. See also 1943 Mad. 336=(1943) 1 M.L.J. 247 cited under S. 270-E, supra. Omission to impose a sentence of fine on a conviction under S. 338 is an illegality. See (1955) 1 M.L.J. 188.

Sec. 339.—See (1938) 2 M.L.J. 579 cited under S. 176 supra. To sustain a conviction under S. 339 of the Madras District Municipalities Act, it would not be necessary to prove that the accused had

as the [1][executive authority] may think proper, and any amount so paid shall be deducted from the amount payable by the owner.

(3) For the purpose of deciding whether action should be taken under sub-section (2), the [1][executive authority] may require any occupier of property to furnish information as to the sum paid by him as rent on account of such property and as to the name and address of the person to whom it is payable; and such occupier shall be bound to furnish sech information.

(4) The provisions of this section shall not affect any contract made between any owner and occupier respecting the payment of any such expenses.

Relief to agent and to trustees.

341. (1) When any person by reason of his receiving the rent of immovable property as agent, trustee, guardian, manager or receiver, or of his being agent, trustee, guardian, manager or receiver for the person who would receive the rent if the propety were let to a tenant, would, under this Act, be bound to discharge any obligation imposed by this Act, or any rule, by-law, regulation or order made under it on the proprietor of the property and for the discharge of which money is required, he shall not be bound to discharge the obligation unless he has, or, but for his own improper act or default, might have had in his hands funds belonging to the proprietor sufficient for the purpose.

(2) The burden of proving the facts entitling a person to relief under this section shall lie on him.

(3) When any person has claimed and established his right to relief under this section, the [1][executive authority] may give him notice to apply to the discharge of such obligation as aforesaid the first moneys which shall come to his hands on behalf or for the use of the proprietor; and should he fail to comply with such notice he shall be deemed to be personally liable to discharge such obligation.

Power of executive authority to agree to receive payment of expenses in instalments.

342. Instead of recovering any such expenses as aforesaid in the manner provided under section 344, the [1][executive authority] may, if he thinks fit, take an agreement from the person liable for the payment thereof, to pay the same in instalments of such amounts and at such intervals as will secure the payment of the whole amount due, with interest thereon at the rate of nine per centum per annum, within a period of not more than five years.

Payment of compensation, etc., by and to the municipality.

Power of municipality to pay compensation.

343. In any case not otherwise expressly provided for in this Act, the [1][executive authority] may, with the approval of the council, pay compensation to any person who sustains damage by reason of the exercise by any municipal authority, officer or servant of any of the powers vested in them by this Act or any other law, or by any rule, by-law or regulation made under it.

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

---

any ownership in the land abutting the road. 177 I.C. 737=48 L.W. 350=1938 M.W.N. 865=A.I.R. 1938 Mad. 910=(1938) 2 M.L.J. 382.

Sec. 343.—The provision in S. 278 of the Act for award of compensation for damage caused by the Municipal Council does not take away the common law right to sue for injunction. 42 M. 796=37 M. L.J. 224=52 I.C. 921. See also 28 M. L.J. 147=28 I.C. 45, cited under S. 350, S. 363, Calcutta Municipalities Act is

Recovery of sum due as taxes.

344. All costs, damages; [1][penalties], compensation, charges, fees (other than school fees), expenses, rents (not being rents for lands and buildings demised by the municipal council), contributions and other sums which under this Act or any other law or rules or by-laws made thereunder, or under any contract in respect of water-supply [2][or drainage] made in accordance with this Act, the rules or bye-laws are due by any person to the council, may if there is no [3][special provision in this Act for their recovery] be demanded by bill as provided in the rules in Schedule IV and recovered in the manner provided [4][therein].

Limitation for recovery of dues.

345. No distraint shall be made, no suit shall be instituted and no prosecution shall be commenced in respect of any sum due to the municipal council under this Act after the expiration of a period of three years from the date on which distraint might first have been made, a suit might first have been instituted, or prosecution might first have been commenced, as the case may be, in respect of such sum.

Procedure in dealing with surplus sale proceeds.

346. If any property, movable or immovable, is sold under the provisions of this Act, and if there is a surplus after the sum due to the municipal council and the costs have been deducted from the sale-proceeds, such surplus shall, if the owner of the property sold claims it within six months from the date of the sale, be paid to him by the [5][executive authority], but if no such claim is preferred within such time, the said surplus shall be credited to the municipal fund and no suit shall lie for the recovery of any sum so credited.

LEG. LEF.

1. This word was inserted by S. 136 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. These words were substituted for the words 'drainage or scavenging' by S. 136 (ii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. These words were substituted for the words 'special provision for their recovery contained in this Act' by S. 136 (ii) ibid.

4. This word was substituted for the words 'in those rules' by S. 136 (ii) ibid.

5. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act 1933 (Madras Act XV of 1933).

---

applicable only in those cases where the plaintiff claims damages or compensation for some act done in the excise of, or honestly supposed exercise of, statutory powers; and not in a case where there was no statutory power to refuse to complete a sale held under the Act; and put the purchaser in possession or to refuse to refund the purchase-money on non-completion of the sale. 58 C.L.J. 235.

Entry into zenana apartments without notice—Liability in damages of Municipality.—The proviso to S. 123, Calcutta Municipalities Act, makes it incumbent on the officer of the Municipality to give at least three hours' notice before the entry and thus afford an opportunity to withdraw from the zenana apartments. So the act of the Daroga in entering through the Khirki door and invading the privacy of the plaintiff without notice or opportunity to the female members to withdraw is an act of trespass and actionable per se without proof of special damage, and the Municipality is liable in damages therefor: 151 I.C. 246=38 C.W.N. 179=1934 C. 501.

Sec. 344: Applicability to public markets.—A municipal council may own lands and buildings other than public markets; S. 334 recognises the possibility of such lands and buildings being leased out for rent. So far as public markets are concerned there are special provisions in Ss. 259 to 261. (1956) Andhra 515.

Sec. 344.—The movables belonging to any person which may be found within the defaulting holding may, under S. 121, be subjected to distress whether the owner is or is not a resident within the Municipality. 151 I.C. 246=38 C.W.N. 179 =1934 C. 501.

Sec. 345.—See 41 L.W. 457=1935 M. 378. Under S. 345 the period of limitation for a suit to recover property tax due by the owner of property which is assess-

347. [1][* * *] No person shall be tried for any offence against the provisions of this Act, or of any rule, or by-law made under it unless complaint is made by the police, or the [2][executive authority] or by a person expressly authorized in this behalf by the council or the [2][executive authority] within three months of the commission of the offence. But nothing herein shall affect the provisions of the Code of Criminal Procedure, [3][1898] in regard to the power of certain magistrates to take cognizance of offences upon information received or upon their own knowledge or suspicion:

Persons empowered to prosecute.

Provided that failure to take out a licence, obtain permission or secure registration under this Act shall, for the purposes of this section, be deemed a continuing offence until the expiration of the period, if any, for which the licence, permission or registration is required and if no period is specified, complaint may be made at any time within twelve months from the commencement of the offence.

348. (1) In case any fine or costs imposed or assessed by a magistrate under this Act or under any rule or by-law made under it, shall not be paid, the magistrate may order the offender to be imprisoned in default of payment subject to all the restrictions, limitations and conditions imposed in sections 64 to 70 (both inclusive) of the Indian Penal Code.

Imprisonment in default of payment and application of fines.

[4][(2) Any fine, costs, tax or other sum imposed or assessed by a magistrate under this Act or under any rule or by-law made under it shall be recoverable by such magistrate under the Code of Criminal Procedure, 1898, as if it were a fine and the same shall [5][except in the case of a fine] on recovery be paid to the municipal council to be applied to the purposes of this Act.]

LEG. REF.

1. These words 'save as provided in S. 59' were omitted by S. 137 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).
2. Vide Footnote 5 on page 224.
3. These figures were inserted by S. 137 (ii) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).
4. This sub-section was substituted by S. 138 of the Madras District Municipalities (Amendment) Act, 1939 (Madras Act X of 1939).
5. Inserted by Government of India (Adaptation of Indian Laws) Order, 1937.

---

ed to such tax is three years from the date when a suit might first be instituted. Such period should be computed from the date of expiry of the period of 30 days prescribed for payment under S. 86 of the Act, and not from the date of expiry of 15 days from the service of the bill demanding payment of the tax. 171 I.C. 957=1937 M.W.N. 465 (1)=45 L.W. 612=A.I.R. 1937 Mad. 429=(1937) 1 M.L.J. 440.

Secs. 345 and 347.—Relative applicability of — Difference between the cases to which the two sections would apply — Prosecution for failure to pay property tax —Limitation. See I.L.R. (1948) Mad. 751=A.I.R. 1948 Mad. 290=49 Cr.L.J. 320=60 L.W. 747=(1947) 2 M.L.J. 457.

Relative applicability of — Difference between the cases to which the two sections would apply.—One point of difference between the cases to which S. 345 of the Madras District Municipalities Act would apply and the cases to which S. 347 would apply is that in case falling under S. 345 a specific sum of money would be due to the Municipal Council under the provisions of the Act even before the date of the prosecution, whereas under S. 347 there is no condition that there should be an amount due to the Municipality before the date of the prosecution. Hence it is S. 345 that would apply to a case of a prosecution for failure to pay property tax, because the prosecution is in respect of a sum due to the Municipal Council under the Act, that is, the property tax and S. 347 could have no application to such a case. S. 345 would apply just as it would apply to a suit for the recovery of the sum and also to a distraint in respect of the sum. 1947 M.W.N. 761=60 L.W. 747 =(1947) 2 M.L.J. 457.

Sec. 347.—A notice was issued on a person under Ss. 149 and 313 regarding a latrine, but negotiations went on between the parties. Ultimately the notice was not complied with nor was any step taken by the Municipality to enforce the same.

Payment of compensation for damage to municipal property.

349. If, on account of any act or omission, any person has been convicted of an offence against the provisions of this Act or against any rule or by-law made under it and by reason of such act or omission damage has been caused to any property owned by or vesting in the municipal council, the said person shall pay compensation for such damage, notwithstanding any punishment to which he may have been sentenced for the said offence. In the event of dispute, the amount of compensation payable by the said person shall be determined by the Court before whom he was convicted of the said offence on application made to him for the purpose by the [1][executive authority] not later than three months from the date of conviction; and in default of payment of the amount of compensation so determined, it shall be recovered under a warrant from the said Court as if it were a fine inflicted by him on the person liable therefor.

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

A second notice was then issued and as that too was not complied with a prosecution was launched within three months after the second notice but more than three months after the first. Held, there was nothing in the Act to prohibit the issue of a second notice when no action had been taken on the first and the prosecution was not barred by time under S. 347. 49 M. 880=27 Cr.L.J. 948=1926 M. 763=50 M.L.J. 557. Object of providing that certain offences can be taken cognizance of only on complaint instituted by the Municipal Committee. See 10 P.R. 1884 (Cr.). A general authority can be given without naming each accused. (22 A. 123, Rel. on; 1924 L. 80, Overruled.) 8 L. 613=28 Cr.L.J. 1002=1928 L. 27. The Local Government at the request of a Panchayat Board extended certain provisions of the Madras District Municipalities Act to the area under the control of that Panchayat Board. But in the notification order issued under S. 206 of the Madras Local Boards Act, the provisions of S. 347 of the Madras District Municipalities Act was not included, with the result that the provision as regards the person who is to prosecute for offences under the provisions of the Madras District Municipalities Act was not included and there was no machinery for starting such prosecutions. In prosecutions for certain offences under the Municipalities Act, within the Local Board area; Held, such prosecutions cannot be maintained until the provisions of S. 347 are applied to the Local Board area with the necessary amendments as regards the persons who are to start the prosecutions. It will be open to the Local Government to take the necessary steps to remedy the defect in future. 230 I.C. 165 =60 L.W. 134=1947 M.W.N. 164=48 Cr.L.J. 563=A. I. R. 1947 Mad. 454=(1947) 1 M.L.J. 138. A complaint of an offence under S. 197 of the Madra District Municipalities Act need not necessarily show on the face of it that there was any express authorization by the Commissioner or executive authority of the Municipality. Where a printed form of complaint in general use is filed with all the particulars of the offence and the signature of the person who is to conduct the prosecution, and the form also contains the recommendation of the Health Officer and the order of the Commissioner sanctioning the prosecution, it must be held that the special authorization required by S. 347 has in fact been given and that the provisions of S. 347 have been complied with. 198 I.C. 182=43 Cr.L.J. 318=1942 M. W.N. 123=A.I.R. 1942 Mad. 347 (2). See also 1944 Mad. 476.

Authority to Prosecute — Essentials.—The authority to prosecute a person under Municipal Act must be in writing, and full particulars of the person to be prosecuted should be given with the authority so given to the prosecutor. 4 L. 120=24 Cr.L.J. 769=1924 L. 80. See 8 L. 613. Authority to prosecute must be personal and a conviction based on the complaint of a person authorised not by name but by designation, is illegal: 137 I.C. 253=1932 L. 238; 8 P.R. 1916 (Cr.)=17 Cr.L.J. 199=34 I.C. 311. Prosecution for an offence against the Municipal Act can be initiated only by a duly authorised agent of the Municipality. 4 L. 120=24 Cr.L. J. 769=1924 L. 80.

Complaint by Sanitary Inspector — Authority.—In the case of a sanitary Inspector the authority to file a complaint should be in writing and by name and not office. Where this procedure is not followed there is no proper complaint and the conviction and sentence based on an invalid complaint cannot be maintained. (8 P.R. 1916 Cr. and 1924 L. 80, Rel. on).

Legal proceedings.

Institution of suit against municipal authorities, officers and servants.

350. (1) No suit for damages or compensation shall be instituted against the muncipal council, any municipal authority, officer or servant, or any person acting under the direction of the same, in respect of any act done in pursuance or execution or intended execution of this Act or any rule, by-law, regulation or order made under it or in respect of any alleged neglect or default in the execution of this Act, or any rule, by-law, regulation, or order made under it until the expiration of one month after a notice has been delivered or left at the municipal office or at the place of abode of such officer, servant or person, stating the cause of action, the relief sought, and the name and the place of abode of the intending plaintiff; and the plaint shall contain a statement that such notice has been so delivered or left.

1933 L. 597 (1)=14 I.C. 801. Police Officer authorised to make complaints by Committee—Police Officer making complaint is complainant not the Committee. 1930 N. 33=25 N.L.R. 194=31 Cr.L.J. 382. As to what constitutes a proper complaint in a Municipal case, see 3 P.R. 1892 Cr.; 2 P.R. 1892 Cr. A Magistrate who as a President or Vice-President or a member of a Municipal Committee has made a preliminary enquiry into a Municipal offence or ordered prosecution is disqualified from trying the case himself. 5 P.R. 1896 Cr.; 3 P.R. 1895 Cr. Conviction for another offence is not maintainable when sanction is got to prosecute for one offence. 1924 P. 377=24 Cr. L. J. 478=72 I.C. 894.

Unauthorised complaint.—Under this Act complaints must be by authorised persons. A complaint by an unauthorised person is no complaint and conviction in such a case is bad. 4 P.R. 1917 Cr.=18 Cr.L.J. 511=39 I.C. 479. Prosecution for an offence of erecting a shed without the permission of the Municipality should be instituted by the Municipality alone and not by a private individual. 1931 B. 141 =32 Bom.L.R. 1502=129 I.C. 342. A complaint by the Board or some person authorised on this behalf is not necessary for a prosecution for assaulting a Municipal employee in the performance of his duty, as the offence of assault is not maintainable under the Act. 158 I.C. 481=36 Cr.L.J. 1386=1935 O.W.N. 1124. Prosecution for failure to obey notice—Legality of notice—Criminal Court, if can consider. See 1935 O. 337 (F.B.). Where the Municipal Board successively filed complaints in the Criminal Court for failure to comply with its notice and allowed two such complaints to be dismissed and the accused acquitted, and then filed a third complaint, which was a belated one, in respect of the same matter based on a third notice served on the accused: held, that the proceeding amounted to a harassment of the accused, and that as the Municipal Board had a remedy by way of a civil suit, it should not be allowed to find a short-cut by getting the accused convicted by a Criminal Court and that, therefore, the proceeding should be quashed in the interests of justice. 1936 A.L.J. 205 =37 Cr.L.J. 426=1936 A. 149.

Sec. 347, Proviso—Prosecution for affixing advertisements without licence—Limitation—Continuing offence.—For a prosecution under the District Municipalities Act for affixing cinema advertisements on vehicles and road sides vested in a Municipal Council without licence, no period of limitation is specified under the proviso to S. 347 of the Act, the offence has to be treated as a continuing offence, and a complaint may therefore be made within 12 months from the commencement of the offence. 1939 M. W. N. 887=50 L.W. 524=(1939) 2 M.L.J. 815. See also (1948) 1 M.L.J. 413.

Sec. 350.—Municipal 'authority' — Meaning of. See 155 I.C. 344=36 Cr.L. J. 720=1935 O. 337 (F.B.). The section is applicable only to suits for compensation for wrongful acts committed under colour of the Act, and not suits for damages for breach of contract. 28 M.L.J. 147=28 I.C. 45 (24 C. 387, Foll.) But see also 108 I.C. 216. S. 350 applies to suits for damages and compensation and that it does not apply to a suit for refund of Companies' tax paid to a Municipal Council under protest. 108 I.C. 216=27 L.W. 243; 56 M.L.J. 525. Applicability of section to suits to recover tax paid on protest. See 56 M.L.J. 525=1929 M. 146. S. 377, Municipal Act (Patna), is for the purpose of protecting a public authority from suits in respect of acts bona fide purporting to have been performed under the aegis of a lawful act but which in spite of the bona fides of the public authority the law has been overstepped and a tort has been committed. It is not intended to apply to suits for the recovery of sums of money other than damage for tort which are lawfully recoverable either under statute or at Common Law. It

(2) Every such suit shall be commenced within six months after the date on which the cause of action arose or in case of continuing injury or damage during such continuance or within six months after the ceasing thereof.

---

does not apply to a suit for a declaration that an alteration in assessment is illegal and for injunction preventing the Municipality for levying such assessment. 1936 P. 322. The language of S. 164, U. P. Municipalities Act, together with its marginal note is quite emphatic and no suit for a refund of octroi which has been assessed by the Municipal Board on goods imported lies in a Civil Court on the ground that the goods were not in fact assessable or that the amount of assessment was excessive. 156 I.C. 281=1935 A.L.J. 635=1935 A. 760. Where the suit is sought to be directed, against the Municipal Board or against its member, officer or servant in respect of an act done or purporting to have been done under the colour of office the rule as to notice is inexorable, and is not to be departed from in view of the subject-matter in dispute or the nature of the relief claimed. 1930 A. L.J. 461=122 I.C. 742=1930 A. 365 (2). Notice under the section is not necessary for suits for compensation for breach of contract. A suit to recover compensation for breach of contract to remove rubbish which was interfered with by Municipal servants is not governed by the section. 28 M.L.J. 147=1915 M.W.N. 143=28 I. C. 45. As to suits based on contract, see 24 S.L.R. 439=123 I.C. 237=1930 S. 209. See also 92 I.C. 18=1926 M. 235. In a suit for injunction against a Municipality, no notice is necessary inasmuch as suits for injunction are not within that section. 16 M.L.J. 582=29 M. 539 (1 M. 335=12 C. 323=8 C. 468, D.) But see 127 I.C. 690=1930 S. 287 (following 54 I.A. 33; 1930 S. 246) contra. Suits referred to in cl. (1) of that section are those, which relate to acts 'done or purporting to be done' whereas a claim for injunction is with reference to what it is apprehended, will be done in the future. (Ibid.). It would not be right to impute to the legislature, an intention to insist upon the lapse of an interval involved in the provision as to notice, even in regard to cases where such lapse might be attended with the completion of the threatened injury, the prevention of which is the very aim of the suit. (Ibid.) A person has a natural right, as owner of land to raise a ridge on his own land adjoining a highway so as to prevent water flowing from such highway, into his garden; and the Municipality will be guilty of trespass and liable for damages, if it removes the ridge so put up, and an injunction may be granted restraining it from repeating such illegal acts. (Ibid.) A Municipal Council laid claim to a plot of land belonging to the plaintiff and directed him by notice to get his title declared by a Court of law. Held, no notice under S. 261 was necessary as the suit cannot be said to be 'on account of any act done by the Council'. 22 L.W. 671. Notice under S. 326, U. P. Municipalities Act, is not necessary in the case of a suit where the relief claimed is an injunction covered by the last proviso to the section. 152 I.C. 817=1935 A.L.J. 139=1935 A. 106. A suit for an injunction against a Borough Municipality is a suit to which S. 206 of the Bombay Municipal Boroughs Act applies, and notice of suit should therefore be given to the Municipality before it is brought. 160 I. C. 736=37 Bom.L.R. 1027=1936 B. 43. Where a suit was filed by a rate-payer for a declaration and injunction in respect of certain resolutions passed by the Municipal Council, held, that the suit was not maintainable in the absence of notice. 26 S.L. R. 78=137 I.C. 348=1932 S. 104. S. 14, Punjab Municipalities Act does not include a suit claiming a perpetual injunction restraining the Municipal Committee from imposing a tax on the ground that the tax has not been lawfully imposed. 1935 L. 930. Where the relief claimed implied a prayer for the declaration of the person's title the Court should adjudicate on the question of title and if it was found to vest in the person he was entitled to the injunction prayed for. 115 I.C. 755= 1929 L. 774. The Municipality entered into a contract for the purchase of dust-bins. The defendants who constituted the Managing Committee (whose duty it was to see that all works in their department were duly executed in accordance with the sanctioned plans and estimates before issuing completion certificates) issued the completion certificates without satisfying themselves that the dust-bins were of the contract quality. In a suit by the Municipality against the defendants for the recovery of moneys paid out in consequence held, that the suit was not one for misapplication of the funds of the Municipality but for damages for negligence that it fell within the purview of S. 167, and as the notice required under that section had not been given, the suit failed. 56 B. 448=34 Bom.L.R. 1216=1932 B. 562. There is no provision which authorises a Court to dismiss the suit if the amount claimed in the notice has been subsequently reduced at the time of the institution of the suit. The mere fact that a larger

amount was claimed in the notice does not in any way prejudice the person to whom the notice is sent in the preparation of his defence nor does it in any way prevent him from making proper amends. In proper cases this factor might be taken into consideration in connection with the order regarding costs. The plaintiff has the option to abandon a portion of his claim. 154 I.C. 1064=4 A.W.R. 1325=1935 A. 51. If a person knows that he has not under a statute authority to do a certain thing, and yet intentionally does that thing, he cannot shelter himself by pretending that the thing was done with intent to carry out the statute. Where a Municipal Chairman knows perfectly well that he has no authority under the District Municipalities Act to start a prosecution, but yet files a complaint and starts the prosecution, he cannot be said to intend to execute any portion of the Act, or any rule or by-law within the meaning of S. 350 of the District Municipalities Act. No notice under the section is therefore necessary in the case of a suit for damages for malicious prosecution against the Chairman by the person prosecuted and acquitted. S. 350 cannot apply to such a case. 1936 M. 547=43 L.W. 727=70 M.L.J. 695.

Limitation.—Seizure of cart for tax—Seizure subsequently declared illegal and cart returned—Suit by cart-owner for damages—No continuing wrong — Time runs from date of seizure and not date of return. 44 L.W. 834=71 M.L.J. 770. Where the plaintiff, before the institution of a suit for damages against a Municipality, sent a notice to it, which was not in accordance with the requirements of S. 261 of the Act and on being informed by the Municipality that the notice was defective, requested that he might be informed of the nature of the defect, but the Municipality took no notice of the request the suit was not available to be dismissed on the ground that the plaintiff had not given a notice as required by S. 261 (Old Act). 13 M.L.J. 426. Cases under S. 80, C. P. Code, requiring notice in case of suits against Government are also of authority in cases under S. 350, District Municipalities Act. 152 I.C. 393=1934 A.L.J. 1149=4 A.W.N. 884. The provision in S. 278 of the Act (of 1884) for award of compensation for damage caused by the municipal council does not take away the common law right to sue for injunction. 42 M. 796=37 M.L.J. 224=52 I.C. 921. Where the plaintiff sued for a declaration of and for an injunction against the Municipal Council, and it was found that the prayer for injunction could not be granted: held, that the prayer for the substantial relief, viz., injunction having been refused, the prayer for declaration of title which is merely ancillary to it could also not be granted. 38 M. 6; 23 M.L.J. 479=17 I.C. 158. The erection of toll-gates or of bars for the collection of tolls is one of the duties imposed on municipalities by the District Municipalities Act, and therefore a suit by the owner of certain land against the municipality on the ground that the latter trespassed on his land and erected a shed for the collection of tolls will be clearly barred under S. 261 of the above Act, if it is not brought within six months after the accrual of the cause of action: 1 M.L.J. 301. Where the suit against the Municipality is not one for damages but for the possession of some land, for the removal of some latrines the special limitation enacted by the Municipal Act does not apply. The suits contemplated by S. 261 of the District Municipalities Act are suits for compensation of damages against an officer of the municipality for wrongful acts done under cover of the act for which time is allowed for the tender of amends. 3 M.L.J. 223; 16 M.L.J. 296, ref., 19 M.L.J. 333=32 M. 371 (F.B.). A muchilika executed by a contractor to a municipality contained a provision that, on any default on his part, he should forfeit the sum deposited by him under the terms of his contract. The deposited amount was attached by the plaintiff in execution of a decree against the contractor. The municipal council had passed a resolution that the deposit had become forfeited under the muchilika. Plaintiff as purchaser of the contractor's right to the above money sued for recovery of the same from the municipility. He was held entitled to a decree. The suit was not of the class contemplated by S. 261 so as to be barred by it. 16 M. 474=3 M.L.J. 124; (Not F. 29 M. 118=16 M.L.J. 37; R. 31 M. 54=17 M. L.J. 537 (F.B.); 32 M. 371=19 M.L.J. 333; D. 28 M. 551). The resolution of the Municipal Council declaring the deposit amount forfeited was ultra vires since the provisions in the muchilika regarding the forfeiture of the deposit was penal and unenforceable and did not fall within the exception to S. 74, Contract Act. The muchilika could not be regarded as having been given under the provisions of the Municipal Act for the performance of any public duty or act. (Ibid.) Where a municipality against which a small cause suit was brought failed to raise the plea that the suit was barred by the provisions of this section it could not be permitted to raise the plea in revision. 13 M.L.J. 426. As to parties in an election petition, see 110 I.C. 342=1928 M. 1129.

Illustrative Cases.—In a suit falling under S. 42, Bombay Municipal Act, the

Government would be the only possible plaintiffs. But the section does not deprive the Municipality of the right which it possesses under the ordinary law of suing any person, whether or not he be a councillor, who misappropriates the property of the Municipality. The reason for providing in S. 42 that moneys may be recovered from a councillor 'as though the moneys had been the property of Government' was to give Government the power to take action in cases in which the Municipality neglects to do so. 56 B. 448=34 Bom.L.R. 1216=1932 B. 562. If some amount is due from a person and a warrant is issued against him and there is a defect in the form of that warrant it will not be open to the defaulter to plead that the distress was unlawful, but it does not entitle the municipal board to say that it is not open even to a stranger from whom nothing is due, to allege that the warrant was unlawful. Such a person can file a suit for damages for unlawful distress of his goods. 154 I.C. 1064=1935 A. 51. The facts were as follows, the respondent made an application to the Municipal Board for permission to build on his site. Permission having been granted the appellant who owned the adjacent plot appealed to the District Magistrate and contended that he had a right of easement in respect of the plot. The Magistrate directed that a pathway should be allowed for the appellant to exercise his right of easement. Subsequently however this order was reviewed and the order for pathway was cancelled. The appellant instituted a suit for declaration of his right in the civil Court. Held, that the suit was not barred by S. 321 of the U. P. Municipalities Act because under S. 184 the right of the third party remained unaffected: 7 O.W.N. 396=123 I.C. 55 =1930 O. 204. In an action to restrain the Municipality from recovering a sum of Rs. 44 from the plaintiff for the use and occupation of certain municipal land on the ground that the Municipality had no right to levy the fees. Held, that the foundation of a claim for the use and occupation of land was either express or implied contract; that there was no express contract and a contract could only be implied if it could have been possible; that under S. 50 (2), C. P. Municipal Act an oral contract for not more than Rs. 50 could be made by the Municipality and it had the power to charge a fee for the use of land and so the Municipality was entitled to claim the sum. 144 I.C. 667=29 N.L.R. 57=1933 N. 93. A tax daroga and a clerk of the municipality come within the contemplation of S. 28 (2) of the Bengal Municipal Act; the fact that they acted under the orders of a committee appointed under S. 21 (1) of the Act does not afford them any protection. Nor is the Local Government's sanction necessary for their prosecution. 39 C.W.N. 20. S. 167 of the Bombay District Municipal Act is subject to S. 15 (2) of the Limitation Act and the plaintiff is entitled to exclude the period of one month of notice from the period of limitation for his suit. (1930 S. 93, Ref.) 56 B. 135=34 Bom.L.R. 143=1932 B. 259. Only the Chairman can be properly sued as defendant in a suit against the Municipality itself: 46 C. 784=23 C.W.N. 611=51 I.C. 993. The purpose of the law is that a Municipal Committee should have reasonable time to answer claims made against it, and so the date of the presentation of a plaint in its final amended stage may be looked to. (3 P.L.R. 900, foll.) 110 P.L.R. 1911=9 I.C. 844. No notice of one month is necessary for bringing against a Municipal Committee a suit for declaration as to ownership of a plot of land. 32 P.R. 1914=23 I.C. 317. Even a suit for on injunction brought against a Municipality without previous notice is liable to be dismissed. 1930 S. 287=127 I.C. 690. See also 26 S.L.R. 78=137 I.C. 348=1932 S. 104. The plaintiff sued a Municipal Committee for a mandatory injunction to rebuild a khal at their expense and for a perpetual injunction to restrain the defendant from building a drain on the site. Held, that the suit could not proceed in respect of the mandatory injunction in the absence of a notice. 131 I.C. 348 (1)=31 P.L.R. 991=1931 L. 124. Suit for defamation against a member of Municipal Board, for what he did in his official capacity, is bad if no notice is served. 1930 A.L.J. 1080=124 I.C. 705. Where a member of a municipal committee which passed a resolution considered by the accused to be defamatory of himself was charged for defamation without obtaining sanction of the Government, held, that the accused was a public servant, not removable from his office without the sanction of the Government, and as the act imputed to the accused was done by him in his character of a member of the Committee, no prosecution would lie without the previous sanction of Government: 14 P.R. 1900 Cr. See also 29 P.R. 1904; 17 P.R. 1902 (Cr.).

Limitation.—A suit by a company, praying for a return of moneys that they had paid under protest to the Municipal Council more than six months before action was brought, was not barred under S. 350 of the Municipalities Act of 1920 not being in respect of that relief, a suit for damages or compensation within the meaning of the section. Payment under protest—Meaning and effect of, explained

(3) If any person to whom any notice is given under sub-section (1) tenders amends to the plaintiff before the suit is instituted, and if the plaintiff does not recover in any such action more than the amount so tendered he shall not recover any cost incurred after such tender by the person to whom such notice has been given, and the defendant shall be entitled to costs as from the date of tender.

(4) Where the defendant in any such suit is [1][the chairman, the executive authority, or] a municipal officer or servant, payment of the sum, or any part of any sum, payable by him in, or in consequence of, the suit whether in respect of costs, charges, expenses, compensation for damages or otherwise may be made, with the sanction of the council, from the municipal fund.

Provision respecting institution, etc., of civil and criminal actions and obtaining of legal advice.

351. The [2][executive authority] may—

(*a*) take, or withdraw from, proceedings against any person who commits—

(i) any offence against this Act, the rules, by-laws or regulations;

(ii) any offence which affects or is likely to affect any property or interest of the municipal council or the due administration of this Act;

(iii) any nuisance whatsoever;

(*b*) compound any offence against this Act, the rules, by-laws or regulations which may be rules made by the *[(State) Government] be declared compoundable;

[3][(*c*) with the approval of the council take, withdraw from or compromise proceedings for the recovery of expenses or compensation claimed to be due to the municipal council;

[3][(*d*) with the approval of the council withdraw or compromise any claim against any person in respect of a penalty payable under a contract entered into with such person by the [2][executive authority];

[3][(*e*) with the approval of the council, defend any suit or other legal proceeding brought against the municipal council or against any municipal authority, officer or servant, in respect of anything done or omitted to be done in its or his official capacity;

[3][(*f*) with the approval of the council, compromise any claim, suit or legal proceedings brought against the council or against any municipal authority, officer or servant, in respect of anything done or omitted to be done as aforesaid;

[3][(*g*) with the approval of the council, institute and prosecute any suit or withdraw from or compromise any suit or claim, which has been instituted

---

LEG. REF.

1. These words were substituted for the words 'the chairman' by S. 17 (2) of the Madras District Municipalities (Amendment) Act 1933 (Madras Act XV of 1933)'.

2. These words were substituted for the word 'chairman' by S. 17 (1) ibid.

3. Cl. (c) was omitted and cls. (d) to (i) were re-lettered as cls. (c) to (h) by S. 139 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

*Substituted by A.L.O., 1950.

---

by the Chief Justice. 52 M. 207=1929 M. 409=56 M.L.J. 525. See also 120 I. C. 867=52 M. 207=29 L.W. 525; 1929 M. 146; 1930 A. 365; 1932 B. 259.

Sec. 351.—A complaint instituted by the Secretary of municipal council cannot be withdrawn by the Council. 27 M.L.J. 617 =23 I.C. 507.

or made in the name of the municipal council or of the [1][executive authority];

[2][(*h*) obtain such legal advice and assistance as he may from time to time think it necessary or expedient to obtain, or as he may be desired by the council to obtain, for any of the purposes mentioned in the foregoing clauses of this section or for securing the lawful exercise or discharge of any power or duty vesting in or imposed upon any municipal authority or municipal officer or servant.]

Power of election authority to defend himself if sued.

[3][351-A. The election authority may defend himself if sued or joined as a party in any proceeding relating to the preparation or publication of electoral rolls or to the conduct of elections, as the case may be, and the expenses incurred by the election authority in so doing shall be payable from the municipal fund.]

Injunctions not to be granted in election proceedings.

[4][351-B. Notwithstanding anything contained in the Code of Civil Procedure, 1908, or in any other law for the time being in force, no Court shall grant any permanent or temporary injunction or make any *interim* order restraining any proceeding which is being or about to taken under this Act for the preparation or publication of electoral rolls, or for the conduct of any election].

Indemnity to the Government, Collector, revenue divisional officer, municipal authorities, officers and agents.

352. No suit shall be maintainable against [5][the (State) Government][6] the District Collector, the revenue divisional officer [7][or any municipal chairman, executive authority] officer or servant or any person acting under the [8][direction of any municipal chairman, executive authority] officer or servant, or of a magistrate, in respect of anything in good faith done under this

---

LEG. REF.

1. Vide footnote 2 on page 351.
2. Vide footnote 3 on page 351.
3. This section was inserted by S. 140 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).
4. S. 351-B added by Act XXV of 1936.
5. Inserted by Madras Act X of 1930.
6. The words 'Provincial Government' were substituted for 'Local Government' by A.O., 1937 and for the word 'Provincial' the word 'State' was substituted by A.L.O., 1950.
7. These words were substituted for the words 'or any municipal chairman' by S. 17 (2) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).
8. These words were substituted for the words 'directions of any municipal chairman' by S. 17 (2), ibid.

Sec. 351-A.—Where the chairman of a Municipality lawfully authorises a person to exercise his powers, including the power to lodge a complaint, the latter is entitled to exercise that power so long as the authorisation lasts and he does not need express authorisation under section 280 to institute a complaint in respect of an offence under the Act. 12 L.W. 42=60 I.C. 1003. A Sanitary Inspector expressly authorised by the chairman to prosecute for deviation from the plan attached to an application for licence preferred a complaint not only for such deviation but also for exceeding the time limited by licence. Held, that the Sanitary Inspector was not expressly or impliedly authorised to prefer a complaint about exceeding the time limit and the conviction of the petitioner for that offence was consequently illegal. 11 L. W. 120=21 Cr.L.J. 327=55 I.C. 599. There is no duty imposed by the Act on the municipal council as a necessary condition precedent to the institution of the prosecution under S. 264-A to have constructed the latrine themselves under S. 264. 42 M. 57=35 M.L.J. 442=48 I.C. 161. A municipal council is not bound to call upon the accused to provide moveable receptacles under S. 217 of the Act before proceeding to take action under S. 264-A, (Ibid.)

Sec. 352.—The Punjab Municipal Act does not oust the jurisdiction of the Civil Courts to give relief to the person aggrie-

Act [1][* * *] or any rule, bye-law, regulation or order made under it.

Libility of chairman, members and executive authority for loss, waste, or misapplication.

353. (1) [2][The chairman, every councillor, and the executive authority] shall be liable for the loss, waste, or misapplication of any money or other property owned by or vested in the municipal council, if such loss, waste or misapplication is a direct consequence of his neglect or misconduct, and a suit for compensation may be instituted against him by the council with the previous sanction of the [3][(State Government] or by the [4][(State) Government].

(2) Every such suit shall be commenced within three years after the date on which the cause of action arose.

Sanction for prosecution of chairman, councillor, or executive authority.

[5][353-A]. When the [6][Chairman, any councillor or the executive authority] is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the [3][(State* Government)].

LEG. REF.

1. The words 'or any other law' were omitted by S. 141 (ii) of the Madras District Municipalities (Amendment) Act 1930 (Madras Act X of 1930).

2. These words were substituted for the words 'chairman and every councillor' by S. 17 (2) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933.

3. The words 'Provincial Government' were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word 'Provincial' the word 'State' was substituted by A.L.O., 1950.

4. Substituted for 'Secretary of State for India in Council' by A.O., 1937.

*'State' substituted for 'Provincial' by A.L.O., 1950.

5. This section was inserted by S. 143 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

6. These words were substituted for the words 'chairman or any councillor' by S. 17 (2) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

---

ved by an order of the Municipal Committee which may be found to be ultra vires, arbitrary, oppressive or capricious. Accordingly, the Civil Court has jurisdiction to entertain a suit for an injunction to the committee directing it to refrain from carrying out an order to demolish certain shops, on the ground that it is unnecessarily harsh arbitrary and amounts to an abuse of power vested in the Committee. **160 I.C. 942**=38 P.L.R. 83. Where a person standing as a candidate for a municipal election has his nomination paper rejected by the municipal chairman improperly and on a mistaken view of the rules, and the Local Government on appeal by the aggrieved candidate refuses to perform its statutory function of interpreting the rules and deciding on the validity or otherwise of the chairman's conduct, he has a right to sue in a Civil Court for a declaration that his nomination is valid and for injunction restraining the conduct of the election without him as a canlidate. 45 M. L.J. 23=73 I.C. 619=1923 M. 475. If however, the election has been held the remedy of the aggrieved candidate is by an objection petition preferred to the Sub-Court or the District Court. Where a person having a right to vote or to stand as a candidate for an election is wrongly deprived of their right, the person so depriving him is liable to damages unless he is himself acting in a judicial capacity. (Ibid.) Under R. 1 of the election rules made under the Madras District Municipalities Act the decision of the Municipal Chairman as to the validity or otherwise of a nomination paper is not final and the Local Government is vested with the power to finally decide upon the interpretation of the rule. (Ibid.).

Sec. 353.—Prosecution of member of Municipal Committee — Sanction of Government, if necessary. See 1934 C. 838.

Sec. 353-A.—The correct test applicable to decide whether sanction under S. 353-A of the Madras District Municipalities Act is necessary to see whether the act complained of was done while acting or purporting to act in the discharge of official duty and whether the said Act can reasonably be related to the official character of the person who did the act or in other words there was anything in the nature of the act complained of that attaches it to

Assessments, etc., not to be impeached.

354. (1) No assessment or demand made, and no charge imposed, under the authority of this Act shall be impeached or affected by reason of any clerical error or by reason of any mistake (*a*) in respect of the name, residence, place of business, or occupation of any person, or (*b*) in the description of any property or thing, or (*c*) in respect of the amount assessed, demanded or charged: provided that the provisions of this Act have been, in substance and effect, complied with. And no proceedings under this Act shall, [1][merely] for defect in form, be quashed or set aside by any Court of justice.

(2) No suit shall be brought in any Court to recover any sum of money collected under the authority of this Act or to recover damages on account of any assessment, or collection of money made under the said authority:

LEG. REF.

1. This word was inserted by S. 144 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

---

the official character of the person doing it. During the course of the meeting of a Municipal Council, one of the members abused another member and challenged him to a fight and threatened to assault him. The threat was continued even after the termination of the meeting. Held, in the circumstances, the abuse and the throwing out of the challenge and its acceptance, was done while acting or purporting to act in the discharge of official duty and sanction under S. 353-A would be required for the cognizance of any offence in respect of that. The further acts amounting to offences committed thereafter cannot be said to be done while acting or purporting to act in the discharge of official duty as they did not in any manner whatsoever relate to the official character of the person at that time and hence would not require sanction under S. 353-A of the Act. 60 L.W. 145=1947 M.W.N. 153=A.I.R. 1947 Mad. 335=I.L.R. (1948) M. 126=(1947) 1 M.L.J. 176.

Sec. 354: Bar of suit—Principles.— In regard to tax assessments the Legislature has clothed municipal corporations with large powers of a quasi-judicial character. Civil Court can interfere in all cases where the provisions of the Act are not complied with in substance and effect. It is only when, upon a fair reading of the entire materials available, the Courts find that there has been a substantial disregard of the provisions that they should interfere, but not otherwise. See 70 L.W. 19.

Sec. 354 (2): Scope—Bar of Civil Suit.—Section 354 (2) is intended to provide a real protection to the Chairman and Council of a municipality in cases where they have proceeded in the matter of assessment in accordance with the provisions of the Act and in such cases no suit will lie even if the actual decision is wrong. The Civil Court is neither an appellate nor a revisional authority to determine the correct rental value on the basis of which an assessment could be based. See (1958) 1 M.L.J. 73=70 L.W. 936.

Sec. 354: Scope of.—S. 354 governs the right to file a suit and it prohibits the suit only if the provisions of the Act have been in substance and effect complied with. Where such provisions have not been complied with, a suit is not prohibited. 109 I.C. 92. If a Municipality levies a tax on a person or Corporation not liable to pay that tax it cannot be said that what has been done, has been done in compliance either in substance or in effect, with the provisions of the Act and it cannot be said that a suit impeaching the assessment is not maintainable in those cases because of S. 354 of the District Municipalities Act (24 M. 205 and 27 M. 547, Foll.) 108 I.C. 216=27 L.W. 243. Assessment by two municipalities for same half-year for professional-tax—Suit for refund—S. 354 if bar. See 1927 M.W.N. 922=54 M.L.J. 147=1927 M. 968. Where a person not liable to assessment is assessed by the Municipality, there is a substantial disregard of the provisions of the Act within the meaning of S. 354 of the Madras District Municipalities Act and the assessment can be impeached in a Court of law. The word 'final' in R. 28 of Sch. IV (Taxation and Finance Rules) must be taken to refer to the proceedings before the Municipality and could not have been intended to shut out the jurisdiction of the Courts. 58 M. 949=41 L.W. 170 =1935 M. 298=68 M.L.J. 162. S. 354 (1) only provides that clerical errors or mistakes in respect of the name, residence, place of business or occupation of any person or in the description of any property or thing or in respect of the amount assessed, damaged or charged, shall not be

enough for impeaching any assessment or demand for taxes. But where the tax-payers were not, as required by the rules, informed that a revision of the assessment of their property had been completed and that they had an opportunity of coming forward and disputing it, the tax imposed without a compliance with the Act is clearly illegal and a suit is maintainable for a declaration to that effect. 34 L.W. 719=1931 M. 808=61 M. L. J. 642. Necessity of notice of amendment of assessment book. Substantial compliance by council with provisions of the Act, suit to recover paid tax not maintainable in cases of. 23 M. 523=10 M.L.J. 138 (19 M. 10, Expl.). A suit against a municipality for recovery of professional-tax levied by them on the ground that it was based on wrong estimate of income is barred under S. 262 (2) of the Act. The remedy is by way of appeal to the council under S. 97 of the Act. 10 L.W. 592=54 I.C. 454. See also 19 M. 10; 23 M. 523; 24 M. 205; 21 M. 367.

A suit does lie where in fact the provisions of the Act have not been complied with, quite apart from the right off appeal provided ffor in Schedule IV. The circumstance that the right of appeal was exercised is immaterial: (1953) 1 M.L.J. 128=66 L.W. 117 =(1953) Mad. 689. Where the municipality acts in disregard of the order of the Deputy Inspector of Municipal Councils based upon the rent fixed by the Collector under the House Rent Control Order, if acts capriciously and arbitrarily the provisions of the Act cannot in terms of the provisions to S. 354 therefore be held to have been complied with by the municipality in substance or effect. See Ibid.

Sec. 354 (2): Jurisdiction of Court to interfere with assessment.—Where the municipal council has determined the question of fact, namely, whether the site assessed was or was not used exclusively for agricultural purposes, on the evidence and matters available, the civil Court cannot assume the powers of the assessing authority and investigate the facts afresh to find out whether its conclusion on the facts is correct. If, on the facts proved, assumed or admitted, the assessment is found to have proceeded on a wrong basis the Civil Court can step in and declare the assessment invalid on the ground that the provisions of the Act have not in substance and effect, been complied with. (1949) 2 M.L.J. 629=62 L.W. 809=1949 M.W.N. 817=1950 Mad. 222.

Sec. 354 (2)—A suit against a municipality to recover money is barred under cl. (2) only if the provisions of the Act have been in substance and effect complied with. 50 M. 987=1927 M. 968=54 M.L. J. 147. See also 91 I.C. 933=50 M.L.J. 77. Where the levy of profession-tax and companies-tax is not under the authority of the Act, the jurisdiction of the Civil Courts would not be ousted by S. 354. 22 L.W. 619=49 M.L.J. 542. Where a person assessed to profession tax under S. 93 (4) of the District Municipalities Act to which on the facts proved he is entitled, in respect of double taxation it takes the case outside the provisions of the Act, and therefore S. 354 (2) cannot operate as a bar to a suit by him to recover tax levied from him and paid by him under protest. 203 I.C. 235=1942 M.W.N. 570=55 L. W. 514=A.I.R. 1942 Mad. 661=(1942) 2 M.L.J. 265. Levy of tax from railway company — Subsequent fixing of reasonable amount under S. 135 (2), Railways Act—Suit by railway company for recovery of excess over amount fixed—Limitation. See (1944) 1 M.L.J. 76. Bar of suit—Tax levied on vacant lands owned by railway company on basis of capital value—Value fixed by Committee appointed at the instance of Railway Company — Legality — Suit for refund — Bar of. See (1941) 2 M. L. J. 189. The effect of S. 354 (2) of the Madras District Municipalities Act is that when the chairman and the council have proceeded in the matter of assessment in accordance with the Act no suit will lie against them even if their actual decision is wrong. 106 I.C. 659 (1)=1928 M. 208. Before house-tax can be collected, notice of the assessment should be given to the assessee and such notice should be properly served in accordance with provisions of the Act. If no notice is served upon the assessee the municipality's right to collect tax is taken away and S. 354 (2) is no bar to a suit to recover the amount collected. 106 I.C. 529 (2)=1928 M. 348.

Sec. 354 (2): Suit to recover alleged excess of tax—Bar of.—Iff fan owner feels that the tax collected from him is excessive he should apply to the appropriate authority under the Act for a proper assessment. He can seek relief in a civil Court only in those limited but well recognised classes of cases in which a court can interfere with the exercise or purported exercise of its discretion by a statutory authority. He cannot file a suit to recover any alleged excess in the tax collected. 1950 Mad. 504. The question of substantial compliance is one of fact but where the action of the Municipal Council in fixing the licence fees at an exorbitant rate is found to be ultra vires, it follows that the provisions of the Act have not been in substance and in effect complied with and the bar to the jurisdiction of the

Provided that the provisions of this Act have been, in effect, complied with.

(3) No distraint or sale under this Act shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any error, defect or want of form in the bill, notice, schedule, form, summons, notice of demand, warrant of distraint, inventory, or other proceeding relating thereto if the provisions of this Act, the rules and by-laws have in substance and effect been complied with:

Provided that every person aggrieved by any irregularity may recover satisfaction for any special damage sustained by him.

Police.

Duties of police-officers.

355. (1) It shall be the duty of every police-officer—

(*a*) to communicate without delay to the proper municipal officer any information which he receives of the design to commit or of the commission of any offence under this Act or any rule, by-law or regulation made under it, [1][and]

(*b*) [2][to assist the chairman, the executive authority] or any municipal officer or servant reasonably demanding his aid for the lawful exercise of any power [3][vesting in the chairman or the executive authority] or in such municipal officer or servant under this Act, or any such rule, by-law or regulation [4][. . . .].

[5][(*c*) Omitted.]

(2) Any police-officer who omits or refuses to perform any duty imposed on him by this Act, shall be deemed to have committed an offence under section 10 or under section 44 of the Madras District Police Act, 1859.

Power of police officers to arrest persons.

356. (1) If any police-officer sees any person committing an offence against any of the provisions of this Act or of any rule or by-law made under it, he shall, if the name and address of such person are unknown to him, and if the said person on demand declines to give his name and address, or gives

---

LEG. REF.

1. This word was inserted by Sch. I to the Madras Motor Vehicles Taxation Act, 1931 (Madras Act III of 1931).

2. These words were substituted for the words 'assist the chairman' by S. 17 (2) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

3. These words were substituted for the words 'vesting, in the chairman' by ibid.

4. The word 'and' was omitted by Sch. I to the Madras Motor Vehicles Taxation Act, 1931 (Madras Act III of 1931).

5. Cl. (c) was omitted by Sch. I, Ibid.

Court to entertain a suit impeaching the assessment is removed. (19 M. 10; 24 Mad. 208; 27 Mad. 547; referred to.) 130 I.C. 750=1931 Mad. 497=61 M.L.J. 748.

Sect 354 (2): Jurisdiction of Civil Court. —The Civil Court is not, so to say, a court of appeal from the order of the assessing authority and once it is satisfied that the assessing authority has exercised its judgment fairly on the materials before it and has come to a particular conclusion as to the annual value of the property, the jurisdiction of the Civil Court is ousted by S. 354. If the levy of tax by a local authority is within the frame work of the statute and is in substantial compliance with the provisions thereof, the Civil Court has no jurisdiction to go into the question whether the levy is excessive or not. But it is equally well-settled that where the basis of the levy itself is wrong, or there is no basis at all for the levy and in that sense there is no substantial compliance with the provisions of the Act, it is open to the Civil Court to declare the levy illegal, and, indeed it is the duty to do so. (1958) 1 M.L.J. 217=71 L.W. 232.

a name and address which such officer has reason to believe to be false, arrest such person.

(2) No person arrested under sub-section (1) shall be detained in custody—

(*a*) after his true name and address are ascertained, or

(*b*) without the order of a magistrate for any longer time, not exceeding twenty-four hours from the hour of arrest, than is necessary for bringing him before a magisstate.

Exercise of powers of police-officer by municipal servants.

357. The [1][(State) Government] may empower any municipal servant or any class of municipal servants to exercise the powers of a police-officer for the purposes of this Act and of the Madras Towns Nuisances Act, 1889.

Miscellaneous.

Application of term 'public servant' to municipal officers, agents and sub-agents.

358. Every municipal officer or servant, every contractor or agent for the collection of any municipal tax, [2][. . . .] fee or other sum due to the municipal council and every person employed by any such contractor or agent for the collection of such tax, [2][. . .] fee or sum shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Prohibition against obstruction of municipal authorities, servants and contractors.

359. No person shall obstruct or molest the council, the [3][chairman, any councillor, the executive authority], or any person employed by the municipal council or [4][any person with whom a contract has been entered into on behalf of the council] in the performance of their duty or of anything which they are empowered or required to do by virtue or in consequence of this Act or of any by-law, rule, regulation or order made under it.

Prohibition against removal of mark.

360. No person shall remove any mark set up for the purpose of indicating any level or direction incidental to the execution of any work authorized by this Act or by any by-law, rule or order made under it.

Prohibition against remeval or obliteration of notice.

361. No person shall, without authority in that behalf, remove, destroy, deface, or otherwise obliterate, any notice exhibited by, or under the orders of the council or the [5][executive authority].

LEG. REF.

1. The words 'Provincial Government' were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word 'Provincial' the word 'State' was substituted by A.L.O., 1950.

2. The word 'toll' was omitted by Sch. I to the Madras Motor Vehicles Taxation Act, 1931 (Madras Act III of 1931).

3. These words were substituted for the words 'chairman or any councillor' by S. 17 (2) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

4. These words were substituted for the words 'any person with whom the chairman has entered into a contract on behalf of the council' by S. 17 (2), ibid.

5. These words were substituted for the word 'chairman' by S. 17 (1), ibid.

Sec. 359.—Where a person obstructs a municipal servant in the discharge of his duties and hurt is caused to the latter in the course of the obstruction that was offered, there is no legal bar to such a person being charged separately for the two offences under S. 359 of the Madras District Municipalities Act and S. 323 of the I. P. Code, because the one offence is not involved in the other. When the Magistrate decides to proceed against the accused under S. 323 of the I.P. Code, it is better to drop the charge under S. 359 of the Municipalities Act. 58 L.W. 640 (1)=A.I.R. 1936 Mad. 102=(1945) 2 M.L.J. 541=I.L.R. (1946) Mad. 668.

Prohibition against unauthorized dealings with public place or materials.

362. No person shall, without authority in that behalf, remove earth, sand or other material or deposit any matter or make any encroachment from, in or on any land vested in the municipal council, or river, estuary, canal, backwater or water-course (not being private property) or in any way obstruct the same.

[*(*State*) *Government's*] *power of delegation.*

Delegation of powers by the *State Government.

363. (1) The [1][(State) Government] may by notification authorize any person to exercise any one or more of the powers [1][vested in them] by this Act [2][except the powers mentioned in Chapters II and III, the power to determine the amount of contribution under section 156, the power to make rules under sub-section (2) of section 77-A and sections 303 and 305 and the power to sanction prosecution under section 353-A] and may in like manner withdraw such authority.

[(2) The exercise of any powers delegated under sub-section (1) shall be subject to such restrictions and conditions as may be prescribed or as may be specified in the notification, and also to control and revision by the Provincial Government or by such persons as may be empowered by them in this behalf. The Provincial Government shall also have power to control and revise the acts or proceedings of any persons so empowered.] (*Added by Madras Act XXXVIII of* 1942).

Transitional and transitory provisions

Passing of property and rights to municipality as reconstituted.

364. All property, all rights of whatever kinds used, enjoyed, or possessed by, and all interests of whatever kind owned by, or vested in or held in trust by, or for, a municipal council, as constituted under the Madras District Municipalities Act, 1884, as well as all liabilities legally subsisting against the said council shall pass to the council as constituted under this Act.

Commencement of Act.

365. This Act shall came into force on such date as the *[(State) Government] may by notification direct:

Provided that the power to make or approve rules, by-laws, and regulations may be exercised at any time after the publication of the assent of the Governor-General under section 81 of the Government of India Act, 1915, and that any election or appointment of chairman, or councillors under this Act, or under the rules made under this Act, may be held or made at any time after

---

LEG. REF.

*Vide F.N. 1 on page 237.

1. These words were substituted for the words 'vested in him' by the Schedule of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. These words and figures were substituted for the words and figures 'except those mentioned in Chapters II and III by S. 145, ibid.

Sec. 362.—Cannot apply to an encroachment on the street, its very language being against such application, and the three months rule of limitation would govern not only a prosecution, under S. 180, but also one under S. 362. 1925 M. 186=47 M.L.J. 917.

Sec. 364.—As to power of a municipality to remove encroachment when permission had been granted under the Act of 1884. See 1955 Andh. W. R. 318, cited under S. 182.

Sec. 365.—Brought into force from 1st October, 1920—Vide Notification No. 595, published at page 364 of Part I-A of the Fort St. George Gazette, dated 10th August, 1920. See also 42 M.L.J. 149=66 I.C. 429.

such publication, but no such election or appointment shall take effect until the commencement of the Act.

Continuance in office of present chairman and councillors.

366. In their application to the term of office and the election and appointment of councillors and the chairman elected or appointed for the first time after the commencement of this Act, the provisions of this Act shall be read subject to the following modifications:—

(a) The term of office of the chairman and of the councillors holding office under the Madras District Municipalities Act, 1884, shall expire on such date or dates after the commencement of this Act as the [1][(State) Government] shall determine and the [1][(State) Government] shall make appointments and cause arrangements for election to be made under this Act so that the newly elected and appointed councillors may come into office on the date fixed for the retirement of the former councillors and the chairman elected or appointed under this Act on the date fixed for the retirement of the chairman elected or appointed or ex-officio under the Madras District Municipalities Act, 1884, and until they so come into office the chairman and the councillors appointed or elected or ex-officio under the Madras District Municipalities Act, 1884, shall have all the powers and be subject to all the duties respectively of the chairman and councillors under this Act; and

(*b*) on or as soon as may be after the constitution of the council under this Act, a meeting shall be held on a day and at a time fixed by the chairman, and if not held on that day, shall be held on some subsequent day fixed by the chairman—

(i) for ascertainment by lot (or if the [1][(State) Government] [2][so direct] otherwise than by lot) of one-third the number of elective seats to be vacated at noon on the first day of November 1921 and of one-third more such seats to be vacated at noon on the first day of November, 1922 and the councillors elected for the total number of seats so ascertained or the councillors elected in their places in casual vacancies shall hold office untill the first day of November, 1921, or the first day of November, 1922, as the case may be and the remaining elected councillors shall continue in office until the first day of November, 1923; and

(ii) for the election of a chairman by those councils on whom this privilege has been conferred by the [1][(State) Government].

Procedure for recovery of arrears of taxes, etc.

367. All arrears of taxes or other payments by way of composition for a tax or due for expenses or compensation or otherwise due to a muncipal council at the time this Act comes into force may be recovered as though they had accrued under this Act.

LEG. REF.

1. The words 'Provincial Government' were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word 'Provincial', the word 'State' was substituted by A.L.O., 1950.

2. These words were substituted for the words 'so directs' by the Schedule to the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

Sec. 367.—Money due to a municipality under a contract cannot be summarily recovered by the corporation. 1924 M. W.N. 545=1924 Mad. 892 (26 Mad. 475 Foll. and Ref. to).

[1][368. (1) Notwithstanding anything contained in this Act, when a municipality is constituted for the first time, the *[(State) Government] may appoint a special officer to exercise the powers, discharge the duties and perform the functions of the municipal council *[and its chairman and executive authority.]

Special provision in the case of newly constituted and reconstituted municipal councils.

(2) [2]The special officed shall cause arrangements for election to be made so that the newly elected councillors may come into office on a day within six months from the date of publication of the notification under sub-section (3) of section 4 declaring the area to be a municipality.

(3) The special officer shall exercise the powers, discharge the duties and perform the functions of the municipal council until the council has been constituted, [3][of the chairman until a chairman has been elected by the council, and of the executive authority until a chairman has been elected or a commissioner has been appointed, as the case may be].

(4) As soon as may be after the constitution of the council, a meeting of the council shall be held on a day and at a time fixed by the special officer for the election of its chairman. If at such meeting no chairman is elected, a fresh election shall be held on such day and at such time as may be fixed by the special officer.

(5) The term of office of the councillors or of the councillors elected in their places at casual vacancies shall expire at the end of three years if the day referred to in sub-section (2) is the first day of November, and in other cases at the end of three years from the first day of November immediately preceding such day.

(6) The provisions of sub-sections (1) to (5) shall apply save as otherwise provided in this Act and, so far as may be, to all cases of reconstitution of municipal councils.

(7) Where the number of seats on a municipal council is increased by or in consequence of a notification under sub-section (1) of section 7, the councillors elected for the additional seats or the councillors elected in their places at casual vacancies shall hold office until the date on which the councillors elected to the original seats at the ordinary elections immediately preceding will vacate office.]

S. 368. *Andhra Amendments*:

Andhra Act XI of 1955 has substituted the word "July" for the word "November" in S. 368 (5) in the two places where it occurs; and has made a further special provision with regard to extension of office of the councillors holding office at the commencement of Act XI of 1955, in S. 4 of the Act which runs as follows:—

(4) Nothstanding anything contained in the principal Act, the term of office of the councillors, holding office at the commencement of this Act and of those who may be elected in their places at casual elections shall extend up to, and expire at noon on the first day of

Extension of the term of office of the Councillors holding office at the commencement of this act.

LEG. REF.

1. This section was substituted for the original by S. 146, ibid.

2. These words were substituted for the words 'and its chairman' by S. 17 (2) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

3. These words were substituted for the words 'and of the chairman until a chairman has been elected by the council' by S. 17 (2) ibid.

*Vide F.N. 1 on page 367.

July 1956; and the State Government shall cause elections to be so held that the newly elected councillors may come into office at noon on the first Day of July 1956 and hold office for the period mentioned in section 8 of the principal Act as amended by this Act.

Adjudication of disputes between local authorities.

[1][369. (1) When a dispute exists between a council and one or more than one other local authority in regard to any matters arising under the provision of this or any other Act and the [2][(State) Government] are of opinion that the local authorities concerned are unable to settle it amicably among themselves, the [2][(State) Government] may take cognizance of the dispute, and

(*a*) decide it themselves, or

(b) refer it for inquiry and report to an arbitrator or a board of arbitrators, or to a joint committee constituted under section 26 for the purpose.

(2) The report referred to in clause (*b*) of sub-section (1) shall be submitted to the [2][(State) Government] who shall decide the dispute in such manner as they deem fit.

[(3) Any decision given, whether before or after this sub-section comes into force, under clause (a) of sub-section (1) under sub-section (2) †[may at the instance of the local authorities concerned, be modified] from time to time by the (State)* Government in such manner as they deem fit, and any such decision with the modifications, if any, made therein under this sub-section, may be cancelled at any time by the (State)* Government.

Any such decision or any modification therein or cancellation thereof shall be binding on each of the local authorities concerned and shall not be liable to be questioned in any Court of Law]. (*Substituted by Madras Act VIII of* 1941).

[3][(4) The powers of the *(State) Government under this section shall, where one of the local authorities concerned in a cantonment authority or the port authority of a major port, only be exercisable with the concurrence of the Central Government.]

References to chairman in other enactments and notification, etc., issued thereunder.

[4][370. (1) Any reference to the chairman contained in any enactment in force in the Presidency of Madras or in any notification, order, scheme, rule, form or by-law made under any such enactment and in force in the said Presidency shall where such reference relates to the executive functions of the chairman be construed as a reference to the executive authority.

(2) If any question arises as to whether any such reference relates to the executive functions of the chairman or not, the decision of the [2][(State) Government] shall be final.]

LEG. REF.

1. This section was added by S. 147 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. The words 'Provincial Government' were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word 'Provincial' 'the word 'State' was substituted by A.L.O., 1950.

†Substituted for the words 'may be modified' by Madras Act X of 1949.

*Substituted by A.L.O., 1950.

3. This sub-section was inserted by the Second Schedule ibid.

4. This section was inserted by S. 15 of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

SCHEDULE I.

ENACTMENTS REPEALED.

[*See section* 2.]

Year.	Number.	Short title.	Extent of repeal.
(1)	(2)	(3)	(4)
1884	IV	The Madras District Municipalities Act, 1884.	The whole.
1897	III	The Madras District Municipalities Act, Amendment Act, 1897.	Do.
1899	I	The Madras District Municipalities Act, Amendment Act, 1899.	Do.
1907	II	The Madras Hill Municipalities Act, 1907.	Do.
1909	V	The Madras District Municipalities Act, Amendment Act, 1909.	Do.
1913	III	The Madras District Municipalities and Local Boards (Amendment) Act, 1913.	Sections 2, 3 and 4.
1914	VIII	The Madras Decentralization Act, 1914.	So much of the schedule as relates to the Madras District Municipalities Act, 1884.
1916	IV	The Madras District Municipalities Act, Amendment Act, 1916.	The whole.

SCHEDULE II.

LIST OF HILL STATIONS.

[*See section* 3 (10).]

Ootacamund, the Nilgiri district.
Coonoor, the Nilgiri district.
Kodaikanal, Madura district.

SCHEDULE III.

RULES REGARDING PROCEEDINGS OF THE COUNCIL.

[*See section* 25.]

Mode of transacting Business.

1. The municipal council shall provide an office and the council shall meet therein for the transaction of business at least once in every month, upon such days and at such times as it may arrange and also at other times as often as a meeting shall be called by the chairman :

[1][Provided that no meeting shall be held in a public holiday.

Explanation.—The expression 'public holiday' includes Sundays and any other day declared by the [2][(State) Government], by notification in the [3][Official Gazette], to be a public holiday.]

[4][2. (1) No meeting shall be held unless notice of the day and time when the meeting is to be held and of the business to be transacted thereat has been given at least three clear days before the day of the meeting.

(2) In cases of urgency the chairman may convene a meeting on giving shorter notice than that specified in sub-rule (1).]

[(3) In municipalities in which there is a commissioner, the agenda for the meeting shall be prepared by the commissioner in consultation with the chairman. The commissioner may include in the agenda any subject which in his opinion should be considered by the council and shall include therein any subject specified by the chairman. On any subject included in the agenda, the chairman as well as the commissioner shall have the right of recording his views in a note and such note shall be

LEG. REF.

1. This proviso and the Explanation were added by S. 148 (1) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. These words were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937.

3. These words were substituted for the words 'Fort St. George Gazette, by Ibid.

4. These rules were substituted for the original by section 148 (ii) of the Madras District Municipalities (Amendment) Act 1930 (Madras Act X of 1930).

circulated to the councillors or placed before the council before or at the time of the consideration of such subject by the council.] (*Added by the Madras Act XXXVIII of 1942*).

[1][3. (1) The chairman shall, on the requisition in writing of not less than one-third of the members then on the council, convene a meeting of the council, provided that the requisition specifies the day (not being a public holiday as defined in the Explanation to rule 1) when and the purpose for which the meeting is to be held. The requisition shall be delivered at the municipal office during office hours to the chairman, secretary, manager or any other person who may then be in charge of the office at least ten clear days before the day of the meeting.

(2) If the chairman fails within forty-eight hours from the delivery of such requisition to call a meeting on the day specified therein, or within three days thereafter, the meeting may be called by the members who signed the requisition on giving the notice provided for in sub-rule (1) of rule 2 to the other members of the council.]

4. All meetings of the council shall be open to the public: provided that the presiding member may and at the request of the council shall in any particular case, for reasons to be recorded in the minute book kept under rule 9, direct that the public generally, or any particular person, shall withdraw.

5. All questions which may come before the council at any meeting shall be decided by a majority of the members present and voting at the meeting and, in every case of equality of vots, the presiding member shall have [2][and exercise] a second or casting vote.

6. No business shall be transacted at a meeting unless there be present at least six members or, if the number of members then on the council exceeds sixteen, at least one third of that number.

7. If within half an hour after the time appointed for a meeting a quorum is not present, the meeting shall stand adjourned, unless all the members present agree to wait longer.

8. No resolution of the council shall be modified or cancelled within three months after the passing thereof except at a meeting specially convened in that behalf and by a resolution of the council supported by [3][. . . . . . .] not less than one-half of the sanctioned number of members.

9. Minutes of the proceedings at each meeting of the council shall be drawn up and entered in a book to be kept for that purpose; and shall be signed by the [4][presiding member] or in his absence by some one of the members present thereat; and the said minutes shall, at all reasonable times and without charge, be open at the municipal office to the inspection of any person who pays any tax under this Act in the municipality.

10. Within three days of the date of the meeting, a copy of the minutes of the proceedings at such meeting shall be forwarded by the chairman to the Collector of the district wherein the municipality is situated, for publication at the cost of the municipal fund, in the district gazette, in English and in a vernacular language of the district: provided that the chairman shall immediately submit to the said Collector any minute of dissent that may be forwarded to him within forty-eight hours of the meeteing by any councillor.

11. The [5][executive authority] shall have the custody of the proceedings and records of the council and may grant copies of any such proceedings and records on payment of such fees as the council may, by general or special order, determine. Copies shall be certified by the [5][executive authority] as provided in section 76 of the Indian Evidence Act, 1872, and copies so certified may be used to prove the records of the council in the same manner as they may, under sub-section (5) of section 78 of the said Act, be used to prove the proceedings of that body.]

12. The proceedigs of every committee appointed by the council shall be recorded in writing and submitted to the council.

[6][13. (*Omitted.*)]

LEG. REF.

1. Vide F.N. 4 on page 242.

2. These words were inserted by S. 148 (iii) of the Madras District Municipalities (Amendment) Act 1930 (Madras Act X of 1930.

3. These words 'the votes of' were omitted by S. 148 (iv) ibid.

4. These words were substituted for the words 'chairman or the member who presided at such meeting' by S. 148 (v) ibid.

5. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

6. This rule was omitted by section 148 (vi) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

SCHEDULE IV.

TAXATION AND FINANCE RULES.

PART I.—TAXATION RULES.

[*See* section 124.]

Definition of tax.

1. In these rules (' tax ') includes payment due by way of composition for a tax.

[1][*Provisions common to taxes in general.*]

[1][2. (1) The [2][executive authority] shall prepare and keep assessment books in such form a may be prescribed showing the persons and property liable to taxation under this Act.

(2) The assessment books and where detailed particulars relating to any assessment are kept in separate records, the portion thereof containing such particulars shall be open at all reasonable times and without charge to inspection by any person who pays any tax to the municipality or his authorised agent and such person or agent shall be entitled to take extracts free of charge, from the said books and records.

(3) The account books of the council shall be open without charge to inspection by any person who pays any tax to the municipality or his authorised agent on a day or days in each month to be fixed by the council.]

[1][3. The [2][executive authority] shall save as otherwise provided in this Act, determine the tax to which each property or person is liable :

Provided that in the case of taxes payable by the [2][executive authority] the original assessment shall be made by the revenue divisional officer or if the revenue divisional officer is also the [2][executive authority] by the council.]

[1][4. (1) If at any time it appears to the council that any person or property has been inadequately assessed or inadvertently or improperly omitted from the assessment books relating to any tax, or that there is any clerical or arithmetical error in the said books, it may direct the [2][executive authority] to amend the said books in such manner as it deems just or necessary :

Provided that no such direction shall be given where it involves an increase in the assessment, unless the person concerned shall have been afforded a reasonable opportunity to show cause to the council why the assessment books should not be amended as proposed.

(2) Such amendment shall be deemed to have taken effect on the earliest date, either in the current half-year or in the two half-years immediately preceding it, on which the circumstances justifying the amendment existed].

5. (1) The [2][executive authority] shall give to every person making payment of a tax a receipt therefor signed by him or by some person duly authorised by him in that behalf.

LEG. REF.

1. Rules 2 to 4 and the heading thereto were substituted for the original by S. 149 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

Sch. IV.—The word 'income which occurs throughout Sch. IV must be taken to mean 'the net income' or profits derived from the business and not the gross income or receipts. There is nothing in the context in the Schedule or in any other part of the Act, which would lead to the conclusion that the word 'income' is there used otherwise than in its natural and commonly accepted sense as denoting the profits or net income derived from the business. 27 M. 547. See also 22 I.C. 277. A District Forest Officer who, as the representative of the Government i.e., of the Secretary of State for India in Council, sells at the forest depot under his management forest produce taken from the forest belonging to Government in the District, is not liable to assessment under Sch. A of Act IV of 1884. 25 M. 747. A trader who stores bags and sells grains by the bulk without breaking the bags is a wholesale dealer within the meaning of Sch. V of the Madras District Municipalities Act. 42 M.L.J. 1429=1922 M.W. N. 79=31 M.L.T. 314 (H.C.)=66 I.C. 429=23 Cr.L.J. 285.

Sch. IV, R. 4 (1): 'Inadequately assessed'—Meaning.—The words 'inadequately assessed in R. 4 (1) strictly speaking may cover cases of under-assessment due to wrong valuation of the land to be taxed as well as cases of such assessment due to a wrong account of tax being fixed on the basis of a correct valuation. If it is the latter the Municipal Council can direct the amendment of the books under rule 4. If it is the former it is only the Exective Authority that has the right to do so. (1958) 1 An.W.R. 66.

(2) Such receipt shall specify—

(*a*) the date of the grant thereof ;

(*b*) the name of the person to whom it is granted ;

(*c*) the tax in respect of which the payment has been made ;

(*d*) the period for which payment has been made ; and

(*e*) the amount paid.

Assessment of the property tax.

[1][6 The value of any land or building for purposes of the property tax shall be determined by the [2][executive authority] :

Provided that the value of any land or building the tax for which is payable by the [2][exectutive authority] shall be determined by the revenue divisional officer or if the revenue divisional officer is also the [2](executive authority), by the council].

[1][7. The [2](executive authority) shall enter the annual or capital value of all lands and buildings determined by him and the tax payable thereon in assessment books to be kept for the purpose at the municipal office. Such books shall record the following particulars, in so far as they can be ascertained, with regard to each assessable item :—

(*a*) the name of the owner ;

(*b*) the name of the occupier ;

(*c*) the designation, if any, of the item ;

(*d*) the name of the ward and street, if any, in which it is situated, and any survey or other number which it bears ;

(*e*) the annual or capital value, as the case may be ; and

(*f*) the amount of the tax payable.]

[1](8. (1) The assessment books shall be completely revised by the [2][executive authority] once in every five years.

LEG. REF.

1. Rules 6 to 12 were substituted for the original rules by S. 150 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. Vide F.N. 2 on page 244.

Sch. IV, Rr. 4 (1), 6, 7, 8, 9, 10 *and* 11 *—Scope—Powers of Municipality to revise taxation as such—Power, if restricted to, direct to amendment of assessment books*—R. 4 (1) of Sch. IV does not confer on the municipality the right to direct the executive authority to enhance the tax or to revise the valuation of a particular property in order to enhance it. The primary object of the rule is to direct an amendment of the books so as to show the correct assessments and not to deal with the merits of any assessment. An amendment may occasionally involve enhancement of tax but it does so only occasionally that is why there is no provision for an appeal or revision against such assessment, whereas in the case of a revised imposition the assessee is given a right to question it. (*Vide*, Rr. 9, 10, 11 of the schedule) under R. 6, the power to determine the value of any land or building for purposes of the property tax is vested in the Executive Authority and, under R. 7 the Executive Authority is to enter the annual or capital value of all lands and buildings determined by him and the tax payable thereon in the assessment books to be kept for the purpose at municipal office, and certain particulars must be specified therein. There is also a provision for revision of the assessment books once in every five years. Under R. 8, it is open to the Executive authority to amend the assessment books at any time between one general revision and another by inserting therein or removing therefrom any property by altering the valuation of any property or the amount of tax. Reading all these rules together it appears that when the value of the property is to be altered, it has to be done only by the Executive authority and not by the municipal council. It is true that both rule 4 and R. 8 aim in one sense, at correcting wrong assessments. But where the assessment is incorrect on the ground of the property having been wrongly valued either because it was valued as agricultural land where it should have been valued as a building site, or because the figure at which it was valued was lower that it should have been, then it is the Executive authority who can alter the value of the land and impose an assessment corresponding to the altered valuation. Interpreting of the words "inadequately assessed in R. 4 (1) in accordance with the maxim *noscitur a socis*, there can be no doubt at all that the power vested in the municipality is only to direct an amendment of the books but no revise the taxation as such. (1958) 1 An. W.R. 66.

Sch. IV, Rr. 4 (1) *and* 19 (1).—A notice was issued to a bank under R. 4 (1) of Sch. IV of the District Municipalities Act calling upon it to show cause against a proposed increase in the assessment to profession tax, because the income from the property and investments had not been included in the assessment. After the assessment had been

(2) The [1][executive authority] may amend the assessment books at any time between one general revision and another by inserting therein or removing therefrom any property or by altering the valuation of any property or the amount of tax *[or subject to any rules which the (State) Government may make in this behalf, by substituting therein for the name of the owner of the property the name of any other person who has succeeded by transfer or otherwise to the ownership of the property]. Such amendment shall be deemed to have taken effect on the first day of the half-year in which it is made :

Provided that when the amendment is made in any half-year after the demand notice for that half-year has been issued, it shall have effect only from the succeeding half-year.] *[except where the fair rent of a building together with land appurtenant to it has been determined by the †(Controller under the §Madras Buildings (Lease and Rent Control) Act, 1946) ;

*[Provided further that the decision of the executive authority in any disputed case of transfer of ownership of a property shall not give the transferee a legal right to the property].

Andhra amendment.—G.O. Ms. No. 431, Local Administration, dated 20th March 1956, Andhra Government, has inserted the following rule 8-A, after r. 8 in Schedule IV: —

"(8-A (1) Notwithstanding anything contained in rule 8 valuation officers shall be appointed by the State Government in the case of municipality notified by the State Government, The valuation officer shall exercise the powers, discharge the duties and perform the functions of the executive authority under these rules in so far as they relate to the revision of the assessment books under rule 8. On the issue of such a notification for the term 'executive authority' wherever it occurs in these rules in so far as they relate to such revision and the hearing of revision petitions filed in connection therewith, the term 'valuation officer' shall be deemed to have been substituted.

(2) (*a*) The State Government shall appoint the valuation officers and sanction to them such establishment as the State Government may deem necessary for the purpose of enabling the said officers to carry out their duties.

(*b*) The State Government shall pay out of the Consolidated Fund of the State, the salaries allowances, leave allowances, cost of training, pension and contributions, if any, towards the provident fund of the valuation officers and of their establishment.

(*c*) the State Government shall recover from the Municipal Council concerned the whole of such proportion of—

(i) the salary and allowances paid to the valuation officers and to their establishment and such contribution towards the leave allowances, pension and provident fund of the valuation officers and of their establishment ; and

(ii) the cost of training the valuation officers and their establishment, as the State Government may, by general or special order, determine.

(3) The executive authority, shall subject to the provisions of rule 27, maintain the assessment books relating to the property tax in accordance with the valuations fixed by the valuation officer.

(4) The executive authority, shall when so requested by the valuation officer, make available to the valuation officers such staff as may be necessary for the exercise of the powers, discharge of the duties and performance of the functions of the valuation officers.

(5) The State Government shall regulate the classification, methods of recruitment, condition of service, pay and allowances and discipline and conduct of the valuation officers and the members of their establishment, and to lay down a special course of training for the valuation officers."

LEG. REF.

1. Vide F.N. 2 on page 244.

* Added by Madras Local Administration Department Notification No. 243, dated 10-3-1942.

† Substituted by Madras Local Administration Department Notification, dated 26th April, 1948.

§See now the Madras Buildings (Lease and Rent Control) Act XXV of 1949).

---

enhanced and the additional tax had been paid under protest, a suit was brought in order to recover the amount involved. *Held*, that although the income of the bank from investments is found to be liable to assessment to profession tax no interference in revision in favour of the municipality will be made in view of the fact that the bank would on other substantial grounds be entitled to relief. It is an elementary proposition of law that all taxing statutes should be strictly construed and there is no difficulty in finding, on the unambiguous wording of R. 4 (1) of Sch. IV of the District Municipalities Act, that the power of revision of assessment books does not extend to a company. Hence the proceedings of the Municipal Council in amending the assessment books and enhancing the tax were beyond the powers of the council and the bank was entitled to recover on that ground. 57 L.W. 347=A.I.R. 1944 Mad. 449=(1944) 1 M.L.J. 451.

Sch. IV, Rr. 7 to 9: Quinquennial revision—No proper notification—Validity of assessment.—Rule 9 of Sch. IV of the Act provides that in case of a general revision of assessment, the Chairman shall give public notice stating that revision petitions will be considered and that notice shall be affixed to the notice board of the Municipal Office and also published in the Municipality by beat of drum. It is the duty of the Chairman under this rule to issue a notifi-

[1][9. When assessment books have have been prepared for the first time and whenever a general revision of such books has been completed, the [2](executive authority) shall give public notice stating that revision petitions will be considered if they reach the municipal office within a period of sixty days from the date of such notice in the case of the Government, a railway admnistration or a company, and of thirty days from the said date in other cases. The notice shall be affixed to the notice board of the municipal office and on the same day be published in the municipality by beat of drum.]

[Provided that in every case where there is an enhancement in the assessment, the executive authority shall also cause intimation thereof to be given by a special notice to be served on the owner or occupier of the property concerned ;

Provided further that, in every case where a special notice is required to be served on the owner or occupier under the first proviso, the period of sixty days and thirty days referred to in this rule shall be calculated from the date of service of such special notice] (These provisos added by L.A.D. Notification No. 578, dated 6th June, 1939.)

[1][10. In every case in which between one general revision and another, the [2][executive authority] assesses any property for the first time or increases the assessment on any property otherwise than in consequence of a general enhancement of the rate at which the property tax is leviable, the [2](executive authority) shall intimate by a special notice to the owner or occupier of such property that a petition for revising the assessment will be considered if it reaches the municipal office within sixty days from the date of service of such notice in the case of the Government, a railway administration or a company, and within thirty days from the said date in other cases.]

[1][11. Any person may, at any time, not being less than thirty days before the end of a half-year, move the [2](executive authority) by revision petition to reduce the tax to which he is liable for the forthcoming half-year on the ground that the annual or capital value of the property in respect of which the tax is imposed has decreased since the assessment of the property was last made or revised.]

[1][12. No petition under rule 9, 10, or 11 shall be disposed of unless the petitioner has been given a reasonable opportunity to appear either in person or by authorised agent and to represent his case.]

13. Immediately after the disposal of a revision petition the [2][executive authority)] shall inform the petitioner or his authorised agent, either orally or in writing, of the orders passed thereon, shall direct him to pay the amount fixed on revision within fifteen days [3][after the date of the receipt of such intimation], or, if the amount is not yet due, within fifteen days from the date on which it becomes due, and shall, if necessary, cause the assessment books to be corrected.

LEG. REF.

1. Rules 6 to 12 were substituted for the original rules by S. 150 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. These words were substituted for the word 'chairman' by section 17 (1) of the Madras District Municipalities (Amendment) Act, 1933, (Madras Act XV of 1933).

3. These words were inserted by S. 151 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

---

cation when he has completed his revision of the assessment books, which will give the tax-payers due notice that they have an opportunity of disputing the revised assessment. A vague notice to the effect that the "Council proposes to increase the taxes" is not a sufficient notice. When not only the taxes were increased but the assessments were made on a revised basis and a notification in the vernacular which left it in doubt as to what it was that was being done, whether it was the assessment of their property that was being revised, or a higher rate of tax which was being calculated on the assessment fixed, is materially defective and a tax based upon the new assessment is, therefore, illegal. 1931 M.W.N. 1097=34 L.W. 719=1931 Mad. 808=61 M.L.J. 642.

Sch. IV, Rr. 8 *and* 15.—Under the Madras District Municipalities Act an amendment of an assessment to tax can be made at any time within three years so as to operate retrospectively. 30 L.W. 271=57 M.L.J. 251=52 Mad. 792=1929 Mad. 849.

Sch. IV, R. 8 (2) *and proviso.*—Applicability and scope. See (1945) 2 M.L.J. 425.

Sec. IV, R. 8-A. (*Andhra*)—*Applicability and Scope of.*—R. 8-A, (added by Andhra Government Order, dated 20-3-1956) is not confined to the categories mentioned in S. 82 (2), but applies to all properties in municipalities notified under that rule (1958) 1 An.W.R. 394=1958 Andh.L.T. 113=1958 And. Prad. 311.

Sch. IV, R. 8-A (*Andhra*) *and R.* 9—*Revision of assessment—Public notice by valuation officer—Validity.*—As the issue of public notices relates to the revision of assessment under the rules, the valuation officer who is empowered, by R. 8-A, to discharge the duties and perform the functions of the Executive Authority under the rules, can discharge the duty to issue public notices. A public notice issued by the valuation officer is not invalid. See ibid.

Sch. IV, R. 13.—When a revision is preferred against an assessment to house-tax, R. 13 of Sch. IV of the District Municipalities Act requires that the chairman should communicate the orders passed thereon to the assessee and also direct him to pay the amount fixed in revision. The obligation of fixing the tax on revision was on the Municipality and no duty was cast on the

[1][14. (1) On the establishment of a municipality assessments shall have effect from the date specified in the notification under section 80.

(2) A general revision shall be deemed to have taken effect on the first day of the half-year following that in which the notice under rule 9 is published, [or, in a case where a special notice is required to be served on theowner or occupier of the property under the first proviso to that rule, on the first day of the half-year following that in which such special notice is served on the owner or occupier of the property] (Added by L.A.D. Notification No. 578, dated 6th June, 1939).

(3) Any corrections in the assessments books made by the [2][executive authority] under rule 13 or 27 shall be deemed to have effect on the first day of the half-year to which the assessment which was sought to be revised or which was appealed against relates.

Explanation.—The levy of a new class of property tax or an enhancement in the rate at which any class of property tax is leviable is no amendment or revision within the meaning of this rule, and shall have effect from the date fixed for the levy or enhancement.]

[1][15. The first payment of tax shall, save as provided in rule 13, be made within thirty days of the date or day specified in rule 14.]

Assessment of the profession tax.

[1][16. (1) [The classes into which companies and persons shall, for the purposes of assessment to the profession tax, be divided, and the maximum half-yearly tax leviable on each class shall be as follows :—

Class.		Half-yearly income.			Maximum half-yearly tax.	
		Rs.		Rs.	Rs.	A.
I	More than	15,000		..	125	0
II	,,	12,000	but not more than	15,000	100	0
III	,,	9,000	,,	12,000	75	0
IV	,,	6,000	,,	9,000	50	0
V	,,	4,800	,,	6,000	25	0
VI	,,	3,800	,,	4,800	12	0
VII	,,	1,800	,,	3,000	6	4
VIII	,,	1,200	,,	1,800	4	0
IX	,,	600	,,	1,200	2	0
X	,,	300	,,	600	1	0

(2) The council shall determine the tax leviable on each class subject to the maximum specified in sub-rule (1) :

Provided that the proportion which the tax on any class bears to the minimum income of that class shall in no case be smaller than the proportion which the tax on any lower class bears to the minimum income of such lower class.

(3) The council may exempt any one or more of the classes in sub-rule (1) from liability to profession tax, but no class shall be exempted from liability when any lower class is liable to a tax.] (Substituted by L.A.D. Notification dated 12th April, 1950).

[1][17. A compny or person shall be deemed, to have transacted business and a person shall be deemed to have exercised a profession, art, or calling or held an appointment within a municipality if such company or person has an office or place of employment within such municipality.]

[1][18. (1) Where a company or person transacts any business other than money-lending in any half-year exclusively in the area of a single municipality, the income of such company or person from

LEG. REF.

1. Rules 14 to 19 were substituted for the original by S. 152, *ibid.*
2. Vide F.N. 2 on page 247.

assessee to fix for himself, the amount he had to pay. It is also a condition precedent which the chairman had to perform before he could take the appropriate proceedings for non-payment of the tax. Proceedings by way of distress without complying with the rule in question is not legal. 177 I.C. 512=47 L.W. 700=(1938) M.W.N. 632= A.I.R. 1938 Mad. 282=(1938) 1 M.L.J. 99.

Sch. IV, R. 16.—The assessee has the option of being assessed under the rule or under the proviso to this rule. 1926 Mad. 944. The office referred to in R. 16 is the office of a company and the office must be something which falls within the category of an head office, principal office or branch office of a company. It is a different thing from a shop of the company. Where a company has its depot where it did nothing except distribute and sell goods which it produced as manufacturers elsewhere and no office work of the company in the proper sense is done there at all, the depot cannot be called an office. 144 I.C. 486=38 L.W. 226=1933 M. 496. The decision on a question whether a particular company which carried on its business within the municipal limits had or had not an office within the meaning of R. 16 is revisable. 144 I.C. 486=38 L.W. 226=1933 Mad. 496.

Sch. IV, R. 18.—"Transacting business for profit" meaning of. 41 C.W.N. 636=1937 Cal. 324; 41 C.W.N. 1022=1937 Cal. 551; 1937 Cal. 324=I.L.R. (1937) 2 Cal. 211.

the transaction of such business shall, for the purpose of levying profession tax under this Act during the half-year, be deemed to be—

(*a*) where income-tax is assessed on such company or person under the Indian Income-tax Act, 1922, for the year comprising the half-year, one-half of the amount at which the profits and gains of such business are computed under section 10 of the Indian Income-tax Act, 1922, for the purpose of assessing the income-tax ; and

(*b*) where the amount of the said profits and gains is not ascertainable or where such company or person is not assessed to income-tax, such percentage or percentages as the [1][(State) Government] may, subject to the approval of [2][both (Houses) of the (State) Legislature], determine, of the turnover of such business transacted in the area of the municipality during the half-year or where this is also unascertainable, during the corresponding half-year of the previous year.

(2) Where a company or person transacts any business other than money-lending partly in the area of a municipality and partly outside such area, the income, of such company of person from the transaction of such business in the area of the municipality shall, for the purpose of levying profession tax under this Act, be deemed to be the percentage referred to in clause (*b*) of sub-rule (1) of the turnover of such business transacted in such area during the half-year or the corresponding half-year of the previous year, as the case may be.

(3) For the purposes of clause (*b*) of sub-rule (1) and sub-rule (2), the turnover of business in any municipality means the aggregate money value of the goods produced, manufactured, purchased or sold or of any other business except money-lending transacted in such municipality.

Explanation.—In determining the turnover of business under this sub-rule—

(*a*) where the delivery of any goods on account of any purchase made by any company or person and the delivery on account of the sale thereof by the same company or person are both effected in the Presidency of Madras, only the latter transaction shall be taken into account ;

(*b*) where the delivery of any goods on account of any purchase made by any company or person is effected in any place outside the said Presidency and the delivery on account of the sale thereof by the same company or person is effected in any place in the said Presidency, the latter transaction shall be taken into account ; and

(*c*) where the delivery of any goods on account of any purchase made by any company or person is effected in any place in the said Presidency and the delivery on account of the sale thereof by the same company or person is effected in any place outside the said Presidency, the former transaction shall be taken into account.]

[3][19. (1) If, in the opinion of the [4][executive authority], profession tax is [5][or will be] due from any company or person for any half-year, he shall serve a notice on such company or person either in that half-year or in the succeeding half-year requiring the company or person to furnish within such period, not being less than thirty days as may be specified in the notice, a return in the prescribed form showing the income on the basis of which, according to such company or person, it or he is liable to be assessed to profession-tax for the half-year in question. Thereupon it shall be open to such company or person to submit a return showing the income derived by it or him during the half-year for which profession-tax is claimed or for the corresponding half-year of the previous year and produce any evidence on which the company or person may rely in support of the return made.

[*Explanation.*—Where, in pursuance of section 97, a statement regarding the income of a company or the salary or income of an employed person has been furnished to the executive authority nothing in this rule shall be deemed to require that authority to serve a notice on such company or person.] (Added by rule (1) issued in G.O. No. Ms. 268, L.A., dated 26th February, 1954.)

(2) If a return is made as required under sub-rule (1) [6][or a statement regarding the income or salary is furnished under section 97] and the [4][executive authority] is satisfied that it is correct and complete he shall levy the profession tax from such company or person on the basis of such [return or statement].[7]

LEG. REF.

1. The words "Provincial Government" were substituted, for the words 'Local Government' by para. 4 (1) of A.O., 1937; and for the word "Provincial" the word "State" was substituted by A.L.O., 1950.

2. These words were substituted for the words 'the Legislative Council' by the Second Schedule ibid; and for the word "chambers" the word "Houses" was substituted by A.A.O., 1950.

3. Rules 14 to 19 were substituted for the original by S. 152 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

4. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

5. The above words were added by Notification No..1096, L.A., dated 5th October, 1938, published on page 625 of Part I-A of the *Fort St. George Gazette,* dated 11th October, 1938.

6. Inserted by R. 2 (a) issued G.O.M.S. No. 268, L.A., dated 26th February, 1954.

7. Substituted for the words "such return," by R. 2 (b), ibid.

Sch. IV, R. 19.—See (1944) 1 M.L.J. 451=1944 Mad. 449 under Rule 4.

Explanation.—In cases not falling under clause (*b*) of sub-rule (1) or under sub-rule (2) of rule 18, if the company or person produces the notice of demand of income-tax served on it or him under section 29 of the Indian Income-tax Act, 1922, for the year comprising the half-year in question, the [1][executive authority] shall be bound to take one-half of the income mentioned in such notice of demand as the income derived from the sources on which profession tax is leviable under this Act, as the income on the said sources for the purposes of levying profession tax.

(3) If no return is made as required under sub-rule (1) or if the [1][executive authority] is satisfied that any return so made is incorrect or incomplete the [1][executive authority] shall assign to the company or person the class in the scale appropriate to the half-yearly income of such company or person as estimated by him.

(4) The [1][executive authority] may, when classifying any company or person under sub-rule (3), do so on general considerations with reference to the nature and reputed value of the business transacted, the size and rental of residential and business premises, the quantity and number of article dealth with, the number of persons employed and the income-tax paid to Government.

(5) The [1][executive authority] shall not be entitled to call for the accounts of any company or person.]

Maximum rates of tax on carriages and animals.

[*See* section 98.]

[2][20. (1) The tax on carriages and animals shall be levied at rates not exceeding the following :—

Tax on carriages and animals.	Maximum half-year tax.
	Rs.
For every tram-car ..	50
For every four-wheeled vehicle with spirings or other appliances acting as springs constructed to be drawn by one or more animals.	10
For every two-wheeled vehicle with springs or other appliances acting as springs constructed to be drawn by one or more animals.	5
For every bicycle or tricycle ..	2
Foe every other vehicle with springs or other appliances acting as springs not being a child's perambulator or go-cart ..	3
For every elephant ..	12
For every camel ..	6
For every horse or mule not under 12 hands ..	6
For every horse or mule under 12 hands ..	2
For every bullock or bull ..	1
For every male buffalo ..	1
	As.
For every ass ..	8
For every dog ..	8
For every pig ..	8
For every goat ..	8

(2) If within the half-year, a person replaces any carriage or animal by another carriage or animal falling under the same class in the table given in sub-rule (1), the said person, in case the replacement was due to the destruction of the carriage or the death of the animal and if he had possession, custody or control of the carriage or animal so replaced at the time of its destruction or death, shall not be liable to more than one payment of tax and the amount of such payment shall be regulated by the aggregate number of days for which the carriage which has been destroyed or the animal which has died and the carriage or animal replacing such carriage or animal have been kept during the half-year.]

[3]21. (*Omitted*).

[4]22. (*Omitted*).

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. This rule was substituted for the original rule by Schedule I to the Madras Motor Vehicles Taxation Act, 1931 (Madras Act III of 1931).

3. This rule was omitted by Schedule I to the Madras Motor Vehicles Taxation Act, 1931 (Madras Act III of 1931).

4. This rule and the headings thereof were omitted by S. 155 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

Appeals.

[1][23. An appeal shall lie to the council in respect of the assessment and imposition of the following taxes and of no others:—

(*a*) assessments made by the revenue divisional officer under rule 3 ;

(*b*) the proceedings of the [2][executive authority) under rule 19 ;

(*c*) the order of the [2][executive authority] under rule 13 upon a revision petition ; and

(*d*) the imposition by the [2][executive authority of any tax on any carriage, animal, or cart, or of the tax on servants.]

24. The council may, of its own motion, or otherwise, cancel, or modify any order passed by the [2][executive authority] reducing or remitting a tax.

25. An appeal shall be made in writing and shall set forth concisely and under distinct heads the grounds of objection to the decision or other proceedings appealed against.

26. No appeal to the council shall be heard—

(*a*) unless it reaches the municipal office—

(i) within fifteen days from the service [3][* * *] of the notice [4][* * * *] referred to in sections 95 and 102; or

(ii) within fifteen days from the date upon which the tax becomes payable under section 86 or 105 or [5][under rule 13 or 15] ; or

(iii) within three days from the service of the notice referred to in section 108 :

Provided that the council may admit an appeal within fifteen days after the time prescribed in this rule, if cause be shown to its satisfaction for not preferring it within the prescribed time ; and

(*b*) unless (except when the [2][executive authority] otherwise directs on the ground of poverty) the tax in respect of which the appeal is presented has been deposited at the municipal office [6][within the period specified in sub-clause (i), (ii) or (iii) of clause (*a*) as the case may be, or where an appeal is presented for admission under the proviso to the said clause] on or before the day upon which the appeal is presented.

27. The assessment books maintained under [7][sub-rule (1) of rule 2] shall be corrected in accordance with any orders passed by the council [8][or under rule 24] on appeal ; in the event of the amount of any tax being [9][reduced] or remitted by the council, the [2][executive authority] shall grant a refund accordingly.

28. The assessment or demand of any tax, when no appeal is made, as hereinbefore provided, and [10][when such an appeal is made, the adjudication of the council thereon shall be final:]

[11][Provided that where any assessment or demand is not in accordance with the assessment books nothing in this rule shall be deemed to prohibit a fresh assessment or demand of the tax being made in accordance therewith.]

[12][28-A. (1) The powers of the council under rules 4, 23 and 24, shall, during any period in respect of which the [13][(State) Government] may, by notification, so direct, be exercised by a special officer appointed by them. And thereupon the council shall cease to exercise the said powers during

LEG. REF.

1. This rule was substituted for the original by S. 156, ibid.

2. Vide foot-note (1) page 250.

3. The words 'or sending' were omitted by S. 157 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

4. The words 'or table' were omitted by S. 157 (i) ibid.

5. Substituted for the words and figures "under R. 15" by L.A.D. Notification N. 539, dated 10th May, 1941.

6. These words were inserted by S. 157 (ii), of the Madras Act, X of 1930.

7. These words and figures were substituted for the word and figure 'R. 3' by S. 158 (i) ibid.

8. These words and figures were inserted by S. 158 (ii) ibid.

9. This words was substituted for the word 'decreased' by S. 158 (i) ibid.

10. These words were substituted for the words 'the adjudication of an appeal by the Council' by S. 159 (1) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

11. This proviso was added by S. 159 (2) ibid.

12. This rule was inserted by S. 160, ibid.

13. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word "Provincial," the word "State" was substituted by A.L.O., 1950.

Sch. IV, R. 28.—The bar of suit under this rule is applicable only to assessment or demand which the municipality is empowered by the Act to make. 1927 M.W.N. 922=54 M.L.J. 147. As to the recovery of octroi and terminal taxes, see 41 P.L.R. 675=1939 Lah. 163.

"Final'—Meaning of—Illegal assessment—Jurisdiction of Court. 68 M.L.J. 162.

the said period and rules 4 and 23 to 28 shall have effect as if for the word 'council' wherever it occurs in those rules and for the word [1][executive authority] in clause (*b*) of rule 26, the words 'special officer appointed by the *[(State) Government] in this behalf' were substituted.

(2) A special officer appointed under sub-rule (1) shall have all such powers of the council and of the [1][executive authority] as are necessary for the purpose of exercising his powers under the said sub-rule and he shall be entitled to the same protection as the council or [1][executive authority] as the case may be, is entitled.

(3) The special officer shall be paid out of the municipal fund such salary and allowances as the *[(State) Government] may, in consultation with the council, fix. If a Government servant is appointed special officers, the council shall also [2][make such contribution towards the pension and leave allowances of that servant as may be required, by the conditions of his service under the **(Government), to be made by him or on his behalf.]

Collection of taxes.

[*See* section 124.]

29. [3][(1) Where any tax not being a tax in respect of which a notice has to be served under section 95, 102 or 108 or in respect of which a direction has to be given under rule 13, is due from any person, the [1][executive authority] shall serve upon such a peron a bill for the sum due before he proceeds to enforce the provisions of rule 30.]

(2) [4][A notice under section 95, 102 or 108 and a bill under sub-rule (1) shall be signed by the [1][executive authority] and shall contain—

(*a*) a statement of the period and a description of the occupation, property or thing for which the tax is charged; and

(*b*) a notice of the liability incurred in default of payment.

[5][(3) Where a notice, bill or directions referred to in sub-rule (1) has not been served or given either in the half-year in which the tax became due or in the succeeding half-year, the tax for the half-year first mentioned in this sub-rule [5-a][shall not be recovered in the manner laid down in rule 30] :

Provided that where the assessment books have been amended under rule 4, the notice, bill or direction, as the case may be, may be given either in the half-year in which the amendment was made or in the succeeding half-year.]

[5-b][(4) Nothing contained in this rule or in rule 30 shall preclude the council from suing in a civil Court for any tax due to it under this act].

30. (1) If the amount due on account of any tax is not paid within fifteen days from the service [6][* * * *] of the notice [7][* * * *] or bill or the giving of the direction referred to in sections 95 and 102 and rules 13 and 29 or within three days from the service of the notice referred to in section 108 and if the person from whom the tax is due has not shown cause to the satisfaction of the [1][executive authority] why it should not be paid, the [1][executive authority] may recover by distraint under his warrant and sale of the movable property of the defaulter, the amount due on account of the tax together with the warrant fee and the distraint fee, and with such further sum as will satisfy the probale charges that will be incurred in connexion with the detention and sale of the property so distrained :

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

*Vide F.N. 13 on page 251.

2. These words were substituted for the words 'pay the Local Government such contribution towards pension and leave allowances of such servant as may be payable under regulations in force for the time being of the branch of Government service to which he belong' by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

** Substituted for the word "crown" by A.L.O., 1950.

3. This sub-rule was substituted for the original by S. 161 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

4. These words and figures were substituted for the words 'Such bill' by S. 161 (ii) of the Madras District Municipalities (Amenment) Act, 1930 (Madras Act X of 1930).

5. This sub-rule was inserted by S. 171 (iii) ibid.

5-a. Substituted for the words shall not be demanded by L.A. Department Notification No. 735, dated 25-6-1940 re-enacted permanently by Notification dated 26-4-1948.

5-b. Added by ibid.

6. The words 'or sending' were omitted by S. 162 (i) ibid.

7. The word 'table' was omitted by S. 162 (i) ibid.

Sch. IV, R. 29.—Scope—Notice under—Failure to give—If bar to suit in Civil Court for recovery of tax under S. 86. 45 L.W. 774=A.I.R. 1937 Mad. 562. Where a Municipality after calling on the guardian and manager of the estate of a lunatic to submit a return showing the income for profession-tax levy and overruling his return stating that he was not liable to pay profession tax for the estate, launches a prosecution against him for non-payment of profession tax, it is incumbent on the prosecution to establish affirmatively that profession

Provided always that movable property described in the provision to section 60 of the Code of Civil Procedure , 1908 , shall not be liable to distraint.

(2) If for any reason the distraint, or a sufficient distraint, of the defaulter's property is impracticable, the [1][executive authority] may prosecute the defaulter before a magistrate.

[2][* * * * * *]

(4) The warrant under sub-rule (1) shall be in the form contained in Appendix A to these rules or in some similar form ; and for each such warrant a fee of two annas [2-a][shall be levied].

(5) Under a special order in writing of the [1][executive authority] any officer charged with execution of a warrant of distress, may, between sunrise and sunset, break open any outer or inner door or window of building in order to make the distress, if he has reasonable ground for believing that such building contains property which is liable to seizure, and if, after notifying his authority and purpose and duly demanding admittance, he cannot otherwise obtained admittance :

Provided that such officer shall not enter or break open the door of any apartment appropriated to women, until he has given three hours' notice of his intention and has given such women an opportunity to withdraw.

31. (1) The officer charged with the execution of a warrant, shall, before making the distraint, demand payment of the tax due and the warrant fee. If the tax and fee are paid, no distraint shall be made, [3][but if the tax or fee is not paid] the officer shall—

(a) seize such movable property of the defaulter as he may think necessary ;

(b) make an inventory of the property seized ; and

(c) give to the person in possession of the property seized at the time of seizure a copy of the inventory and the notice of sale in the form in Appendix B to these rules or in some similar form :

[4][Provided that a period of seven days shall be allowed for paying the amounts due and redeeming the property seized.]

(2) The distress shall not be excessive, that is to say, the property distrained shall be as nearly as possible [5][equal in value to the tax] due by the defaulter together with all expenses incidental to the warrant, distraint, detention and sale.

32. (1) If the amount due by the defaulter on account of the tax, the warrant fee and distraint fee and the expenses incidental to the detention of the property are not paid within the period of seven days mentioned in the notice given under rule 31 and if the distraint warrant is not suspended by the [1][executive authority], the property seized or a sufficient portion thereof shall be sold by public auction under the orders of the [1][executive authority] who shall aplpy to proceeds of the sale to the payment of the amount due on account of the tax, the warrant fee and the distraint fee and the expenses incidental to the detention and sale of the property ,and shall return to the person in whose possession the property was at the time of seizure any property or sum which may remain after the sale and the application of the proceeds thereof as aforesaid. If the proceeds of the sale are insufficient for the payment of the amount due on account of the tax, the warrant fee and distraint fee and the expenses incidental to the detention and sale of the property, [1][executive authority] may again proceed under rule 30 in respect of the sum remaining unpaid.

(2) When the property seized is subject to speedy and natural decay, the [1][executive authority] may sell it at any time before the expiry of the said period of seven days, unless the amount due is sooner paid.

(3) The [1][executive authority] shall consider any objections to the distraint of any property which are made within the said period of seven days and may postpone the sale pending investigation thereof. If the [1][executive authority] decides that the property attached was not liable to dstraint, he shall return it, or if it has already been sold, the proceeds of the sale to the person appearing to be entitled thereto and may again proceed under rule 30 ; and all fees and expenses connected with the first distraint and sale shall be recoverable from the defaulter if it shall appear to the [1][executive

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. Sub-R. (3) was omitted by L.A.D., Notification No. 735, dated 25-6-1940, re-enacted permanently by Notification dated 26-4-1948.

2-a. These words were substituted for the words 'shall be leviable' by S. 162 (iii) ibid.

3. These words were substituted for the words 'but if not' by S. 163 (i) (a) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

4. This proviso was added by S. 163 (i) (b) ibid.

5. These words were substituted for the words 'proportionate in value to the sum' by S. 163 (ii) ibid.

tax was legally leviable from the accused. It is open to the accused in such a prosecution to plead in defence and to prove notwithstanding the Municipal Council's decision against him to the contrary, that he is not liable to pay the tax and therefore not liable to prosecution under R. 30, Cl. (2) of Sch. IV of the District Municipalities Act. 167 I.C. 854=9 R.M. 487=38 Cr.L.J. 464=45 L.W. 236=A.I.R. 1937 Mad. 291=(1937) 1 M.L.J. 274.

authority] that he wilfully permitted the distraint of the property [1][when to his knowledge it was not liable] to distraint.

33. (1) Distraint fees shall be payable at such rates not exceeding those mentioned in Appendix C to these rules as may be, from time to time determined by the council.

(2) Such fees shall not be held to include the expenses incidental to the detention of any property distrained under this Act.

34. The property of a person in default under [2][sub-rule (1) of rule 30] may be distrained wherever it may be found within the municipality.

35. If the tax due on account of any building or land [3][remains unpaid in whole or part at the end of the period specified in sub-rule (1) of rule 30], [4][executive authority] may, if the said tax has not remained for more than twelve months, require the occupier for the time being of such building or land to pay the amount within a specified period [5][not being less than fifteen days] and if the occupier fails to comply with [6][such requisition] the [4][executive authority] may distrain and sell any movable property [7][found on the building or land,] and the provisions of the foregoing rules shall, *mutatis mutandis*, apply to all distraints and sales effected under this rule : provided that no occupier shall be liable to prosecution or to a civil suit in respect of any sum recoverable from him under this rule, unless he has wilfully prevented distraint or a sufficient distriant.

[8][35-A. If any tax due from any person remains unpaid in whole or in part at the end of the period specified in sub-rule (1) of rule 30 and if such person has left [8-a][* *] India or cannot be found, the said tax or such part thereof as remains unpaid together with all sums payable in connexion therewith shall be recoverable as if it were an arrear of land revenue.]

[9][36. (1) Every person who is prosecuted [10][under sub-rule (2) of rule 30] shall be liable, on proof to the satisfaction of the magistrate that he wilfully omitted to pay the amount due by him or that he wilfully prevented distraint or a sufficient distraint, to pay a fine not exceeding twice the amount which may be due by him on account of—

(*a*) the tax and the warrant fee, if any, and

(*b*) if distraint has taken place the distraint fee and the expenses incidental to the detention and sale, if any, of the property distrained [11][* * *].

[12][(*c*) (*Omitted*).]

[13][(2) Whenever any person is convicted of an offence under sub-rule (1), the magistrate shall, in addition to any fine which may be imposed, recover summarily and pay over to the municipal council]—

the amounts, if any, due under the heads specified in clauses (*a*) and (*b*) of sub-rule (1) ; and may in his discretion also recover summarily and pay to the council such amount, if any, as he may fix as the costs of the prosecution.]

[14][36-A. Neither the [4][executive authority] nor municipal officer or servant shall directly or indirectly purchase any property at any sale of distrained property held under the foregoing rules.]

PART II.—FINANCE RULES.

[*See* section 124.]

Authorised objects of expenditure.

37. The purposes to which the municipal fund may be applied include all objects expressly declared obligatory or discretionary by laws or rules, and in general everything necessary for, or con-

---

LEG. REF.

1. These words were substituted for the words 'which to his knowledge was not liable' by S. 164 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. These words and figures were substituted for the word and figures 'R. 30' by S. 165 ibid.

3. These words were substituted for the words and figures 'remains unpaid at the end of the period mentioned in R. 30 by S. 166 (i) ibid.

4. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

5. These words were inserted by S. 166 (ii) the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

6. These words were substituted for the words "this requisition" by S. 166 (iii)", ibid.

7. These words were substituted for the words 'found on the premises, by S. 166 (iv) ibid.

8. This rule was inserted by S. 167 ibid.

8-a. The word "British" was omitted by A.A.O., 1950.

9. Rule 36 was renumbered as sub-R. (1) of R. 36 by S. 168 (1) ibid.

10. These words and figures were substituted for the words and figures 'under R. 30' by S. 168 (1) (i) ibid.

11. The words 'and he shall also pay the said amount and the costs of the prosecutions' were omitted by S. 168 (1) (ii) ibid.

12. Clause (c) was omitted by S. 168 (1) (iii) ibid.

13. This sub-rule was added by S. 168 (2) ibid.

14. This rule was inserted by S. 109 ibid.

Sch. IV, R. 37.—The Guntur Municipality passed a resolution introducing National Education in its schools and some

ducive to the safety, health, convenience or education of the inhabitants or to the amenities of the municipality and everything incidental to the administration ; and the fund shall be applicable thereto within the municipality subject to these rules or special orders as the [1][(State) Government] may prescribe or issue ; and shall be applicable thereto without the municipality if the expenditure is authorised by this Act, or specially sanctioned by the [1][(State) Government.]

38. The objects of expenditure connected with the public safety include the following :—

(*a*) the lighting of public streets, and the provision, purchase, exploitation and maintenance of electric, gas or other undertakings for lighting public and private streets, places and buildings ;

(*b*) extinction of fires ;

(*c*) control, supervision or removal of dangerous places, buildings, trades and practices ;

(*d*) regulation of traffic ;

(*e*) prevention and removal of obstructions in public streets or places ; ,

(*f*) the giving of relief and establishment and maintenance of relief works in time of famine or scarcity.

39. The objects of expenditure connected with the public health include the following :—

(*a*) The construction and maintenance of hospitals and dispensaries and temporary places of reception within the municipality or without the municipality for the treatment of infectious diseases occurring in the municipality ; building hospitals and dispensaries and places of reception for the sick in general : contributing towards hospitals, dispensaries or places of reception provided by the [1][(State) Government]; contracting for the use of a hospital or part of a hospital, dispensary or place of reception: combining with any other local authority or with the [1][(State) Government] to provide a common hospital, dispensary or place of reception ; sending indigent inhabitants of the municipality to institutions outside the municipality for treatment : the training of medical practitioners, medical subordinates, midwives, nurses, health officers, sanitary inspectors and analysts the provision of nurses for attendance on patients suffering from infectious diseases at the houses of such persons ; vaccination and the training and supervision of vaccinators and the provision of lymph : the registration of births, deaths and marriages ; the enumeration of the inhabitatnts of the municipality and other measures of a like nature ;

(*b*) the construction and maintenance of lunatic asylums ;

(*c*) the construction, establishment and maintenance, supervision and control of public markets and slaughter-house : [2][of shops, stalls and plinths ;] of latrines : or sewage farms and all works for the removal or disposal of sewage : of water-work, drinking fountains, tanks and wells ; of wash-houses and dhobikhanas ; of parks, squares and gardens ; the reclamation of unhealthy localities : and other sanitary measures of a like nature ;

(*d*) the cleansing and watering of streets and drains, scavenging ; the removal of excessive or noxious vegetation ; the abatement of all nuisances ;

(*e*) the regulation and control of offensive or dangerous trades, or unhealthy buildings or localities, and of burial and burning grounds and crematoria ; the provision of sites for and closing of burial and burning grounds ; the provision of new sites for offensive and dangerous trades and of special locations for factories ; the acquisition of congested areas and the provision of new sites, whether within or without municipal limits, to relieve congestion or to provide for the growth of population ; improvement and reclamation of land, planning, surveying and control of town-extensions, whether within or without municipal limits, redistribution of sites in such extensions and all measures of a like nature ; [3][and the acquisition of land for any of the aforesaid purposes.]

40. The objects of expenditure connected with the public convenience, education and amenities include—

(*a*) the construction, maintenance, diversion and improvement of streets, bridges, causeways, culverts and the like and the acquisition of the land necessary for the buildings to form or improve streets ; the regulation of building ; the construction of model dwellings and the encouragement of co-operative buildings societies by loans, grants of land, or prizes ; the removal of projections and encroachments ; the naming of streets ; the numbering of houses ; the planting and preservation of trees in public streets and places ; the maintenance of public monuments ;

LEG. REF.

1. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word "Provincial" the word "State" was substituted by A.L.O., 1950.

2. These words were inserted by S. 170 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. These words were added by S. 170 (ii) ibid.

---

time later a G.O. was passed prohibiting expenditure or funds on schools not recognised by the Government. The chairman in carrying out the resolution of the council incurred expenses, and he was sought to be surcharged with the same. Held. he was liable. 49 M. 49=1926 M.W.N. 467=92 I.C. 918=1926 M. 297.

(b) subject to rules 47 to 52, [the establishment and maintenance of schools, and hostels, the construction and maintenance of school houses and hostel buildings], public libraries and reading rooms, museums, art-galleries, gymnasia or any other institutions connected with the diffusion of mental or physical culture or technical instruction or the training of teachers ;

(c) the holding of industrial exhibitions or fairs ;

(d) the construction, maintenance and adornment of public halls and theatres ; the acquisition and maintenance of recreation grounds, playing fields and promenades ;

(e) subject to all provisions of law, the construction, maintenance and purchase or expolitation of tramways and other transport services (railways not included), of telephone systems, grass farms, dairies, public bakeries and [1][other agricultural, industrial or trading concerns] of public utility either within or without the municipal limits and whether or not in combination with other authorities or persons, and subscription to debenture loans of any such concerns ;

(f) the employment of veterinary officers, the prevention of diseases of animals, the provision of places for the treatment of sick animals, and the prevention of curelty to animals ;

(g) the construction and maintenance of rest-houses, choultries, poor-houses, pounds and other works of public utility ;

(h) the provisions and maintenance or holding or zoological and horticultural gardens and exhibitions ;

(i) the provision of standard weights, scales and measures and public weighing places ;

(j) the provision and maintenance of public baths and bathing places ;

(k) the provision of music for the people ;

(l) the provision and maintenance of public clocks and clock-towers or a time gun ;

(m) the organisation and maintenance of health associations ;

(n) the organization and maintenance of associations for the prevention of juvenile smoking and cruelty to children.

41. With the previous sanction of the [2][(State) Government and of [* * * * *] the Central Government] the council may—

(a) upon any of the public streets in the town or upon any land in or without the twon which is vested in the council, construct or maintain any railway which may appear to the council to be useful or necessary for the removal of rubbish and offensive matter or for any of the other purposes of this Act ;

(b) use and employ upon any such railway locomotive engines or other motive power and carriages and wagons to be drawn or propelled thereby ;

(c) carry and convey passengers and goods upon any such railway ;

(d) make such reasonable charges in respect of such passengers or goods as the council may from time to time determine ;

(e) from time to time enter into any contract with any person for the construction, maintenance and working of any such railway in or without the town ;

(f) from time to time enter into any contract with any person for the passage over any such railway of locomotive engines or other motive power, carriages and wagons belonging to or controlled by such person upon the payment of such tools or rent, and unless such conditions and restrictions, as may be mutually agreed upon ; and

(g) lease any such railway to any person upon such terms and under such conditions and restrictions as may be mutually agreed upon.

Note.—The term 'railways' in this rule does not include 'tramways.'

42. The objects of expenditure incidental to the administration include—

(a) the provision and maintenance of a principal municipal office and record-room and of other offices with the cost of appurtenances and fittings and insurance ;

(b) salaries, allowances. liveries, pensionary contributions and provident fund contributions, gratuities, and pensions of, and the cost of hire of vehicles for, the municipal officers and servants ; study leave allowances of professional officers and subordinates ; sending municipal servants to the Pasteur Institute, Coonoor, for treatment ;

(c) stationery, printing and all office and advertising expenses ;

(d) legal expenses ;

LEG. REF.

1. These words were substituted for the words 'other industrial concerns' by S. 171 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. The words "Provincial Government and of the Federal Railway Authority or the Central Government" were substituted for the words 'Governor-General in Council' by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937; and the word "State" was substituted for "Provincial" by A.L.O., 1950; and the words "the Federal Railway Authority were omitted by A.A.O., 1950.

(*e*) election expenses ;

(*f*) the provision and maintenance of municipal workshops ;

(*g*) municipal surveys, the preparation of maps of the municipality and the preparation and maintenance of a record of rights in immovable property.

Obligatory expenditure.

[42-A. The municipal council (1) shall make provision for the construction, maintenance, diversion and improvement of streets, bridges, causeways, culverts and the like to such extent as the [1][*(State) Government] consider necessary; and (2) shall not divert such provision to other purpoes without the express sanction of the *[(State) Government.] (Inserted by L.A.D. Notification No. 542, dated 12th May, 1941, re-enacted permanently by Notification dated 26th April, 1948.)

43. (1) Expenditure on the following objects is obligatory subject to special directions that the [1][(State) Government)] may issue in respect of any municipality by notification:—

(*a*) the principal municipal office and record-room ;

(*b*) maintenance of public property and monuments vested in the municipality ;

(*c*) maintenance of property owned by the municipality ;

(*d*) salaries and pensionary and provident fund contributions, gratuities, and pensions of the municipal officers and servants according to the conditions on which such persons entered the municipal service ;

(*e*) scavenging ;

(*f*) lighting the public streets ;

(*g*) burial and burning grounds where no sufficient number is provided by other agency;

(*h*) medical relief to the extent laid down in rules 44, 45 and 46 ;

(*i*) diffusion of education to the extent laid down in rules 47 to 51 ;

(*j*) registration of births and deaths ;

(*k*) vaccination ;

(*l*) provision of slaughter houses;

(*m*) payment of interest on and amortization of debt (if any) ;

(*n*) payment of the election expenses including the cost of the preparation and revision of the electoral roll, the conduct of elections to the municipal council, and the maintenance of the election establishment ;

Explanation.—The cost of maintenance of the election establishment shall include the pay, pension and leave allowances, if any, of the officers and servants of [2][the Government] or of any other authority, employed in the preparation and revision of the electoral roll and in the conduct of the elections.

[3][(*o*) payment of such contribution towards the cost of training commissioners of Municipalities as may be fixed by the * (State) Government ;

Explanation.—The cost of training Commissioners may include the whole or such part as the Government deem equitable, of the pay, pensionary or provident fund contribution and leave and other allowances, if any, of the officers and servants of the (Government)† or of any other authority employed and other incidental expenses incurred in connection with such training.]

[3-a.] [(*p*) payment of travelling allowance of a person appointed as commissioner of the Municipality in respect of his journey to join the appointment.]

Andhra Amendment.—G.O. Ms. No. 431, Local Administration, 20th March, 1956, has inserted clause (oo) after clause (o).

" (oo) " payment of such contribution as may be fixed by the State Government towards the salary, allowances, leave allowance, cost of training, pension and contributions, if any, towards the provident fund of the valuation officers and of their establishment."

[3-a](*q*) (1) all other objects declared obligatory by law or rule.

LEG. REF.

1. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; and the word "State" was substituted for "Provincial" by A.L.O., 1950.

*Substituted for the word "Provincial' by A.L.O., 1950.

2. The word "Crown" was substituted for the words 'the Government' by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937; and for the word "crown" the word Government was substituted by A.L.O., 1950.

3. Original Cl. (o) was lettered as Cl. (p) and a new Cl. (o) was inserted by L.A.D. Notification No. 985, dated 28-8-1940, re-enacted permanently by Notification dated 3-9-1940.

3-a. Original Cl. (p) was relettered as Cl. (q) and a new Cl. (p) was inserted by L.A.D. Notification No. 1165 dated 11-11-1941, re-enacted permanently by Notification dated 26th April, 1948.

†Substituted for the word "crown" by A.L.O., 1950.

(2) The [1][State Government] shall determine every year the amount of the election expenses referred to in clause (*n*) of sub-rule (1) and their determination shall be final and binding on the municipal council. Such amount shall have priority over all other charges except charges for the service of authorized loans including the loans and advances specified in section 124-A, and the expenses specified in sub-sections (2) and (3) of section 39.

Obligatory medical expenditure.

44. (1) The council shall provide and maintain either from endowments or from the municipal fund or by grants-in-aid therefrom in accordance with such rules as may from time to time be prescribed by the [1][State Government]—

(*a*) a hospital or dispensary where the sick poor of the municipality shall be entitled to receive medical and surgical advice and treatment free of charge ; and

(*b*) a hospital for the treatment of patients suffering from infectious diseases in the municipality.

The council shall provide and maintain more than one such hospital or dispensary if the [1][State Government] so diret provided that the [1][State Government] shall not so direct until the council shall have had an opportunity of submitting its views on the subject to the [1][State Government] :

Provided further that the council shall not be bound to provide or maintain such hospitals or dispensaries when in the opinion of the [1][State Government] sufficient provisions has otherwise been made for the treatment free of charge of the sick poor and the treatment of patients suffering from the infectious diseases in the municipality.

(2) Any inhabitant of the municipality, who is not a fit object of public charity, may, subject to such regulations as the council, with the approval of the [1][State Government], may from time to time, obtain medical or surgical advice and treatment from any hospital or dispensary maintained by the council from endowments or from the municipal fund : provided that any charges incurred by the council in medical or surgical relief of persons other than the sick poor of the municipality or those unable to pay a medical attendant shall be reimbursed by such persons.

(3) The council may also permit the treatment in the hospitals or dispensaries maintained by it from endowments or from the municipal fund of any person not resident in the municipality.

45. The council shall provide every hospital or dispensary provided or maintained by it with all necessary drugs, instruments, apparatus, furniture and appliances on a scale approved by the [1][State Government], and when, in the opinion of the council, provision for in-patients may be necessary, it shall also provide a sufficient number of cots, bedding, clothing, furniture and diet for such in-patients.

46. The council shall employ a medical officer for any hospital or dispensary maintained by it from endowments or from the municipal fund.

Obligatory educational expenditure.

47. The council shall, so far as the funds at its disposal may admit, make provision for the instruction in schools of all children of school-going age resident within the limits of the municipality for whose instruction provision shall not otherwise have been made.

48. The council may provide instruction—

(i) either by schools maintained wholly from the municipal fund, or

(ii) by means of grants-in-aid to private schools from the said fund in accordance with such rules as may from time to time be prescribed by the [1][State Government,] or

(iii) be contributing towards the cost of Government schools, or

(iv) by more than one of such means.

49. The council may, with the previous sanction of the [1][State Government], maintain either wholly from the municipal fund, or by grants-in-aid therefrom, elementary schools to which admission may be wholly or partly free for any class of the inhabitants which, in the opinion of the council, is by reason of poverty unable to pay the fees leviable in schools maintainsed by the council whether wholly from the municipal fund or by grants-in-aid therefrom.

50. (1) If at any time it seems advisable to the [1][State Government] that a grant-in-aid should be made to any school maintained solely for the instruction of the children of any particular class of the inhabitants of any municipality [2][they may direct] the municipal council to make such grant to such school ; and the council shall make it accordingly ; provided that the [1][State Government] shall not so direct until the council shall have had an opportunity of submitting its views on the subject to the [2][State Government.]

LEG. REF.

1. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; the word "State" was substituted for "Provincial" by A.L.O., 1950.

2. These words were substituted for the words 'he may direct' by the Schedule to the Madras District Municipalities (Amendment Act, 1930 (Madras Act X, of 1930).

(2) The instruction to be provided by the council shall be of such standards as may from time to time be determined by the [1][State Government].

51. (1) The council shall, unless otherwise provided by any law for the time being in force or in the case of elementary schools exempted by the [1][State Government] on such conditions as it may prescribe from time to time, levy in every school maintained by it, fees as may from time to time be determined by the [1][State Government] :

Provided that if the council is satisfied that the parent or guardian of any child, resident in the municipality, is by reason of poverty unable to pay for the elementary education of such child, it may remit the whole or part of the fees, but it shall not compel the parent or guardian of such child in consideration of the said relief to send such child to any particular municipal school :

Provided further that the council may, in any secondary school, in accordance with a scheme framed by it and approved by the Director of Public Instruction, remit the whole or part of the fees of poor pupils, subject to the condition that the fee income thus foregone shall not exceed 10 per cent. of the total fees realizable from all pupils of the school at the rates determined by the [1][State Government.]

(2) The proceeds of all fees levied by the council as aforeaid shall be expended by the counci for the provision of instruction by means of schools.

Discretionary educational expenditure.

52. The council may also provide wholly from the municipal fund, or by means of grants-in-aid therefrom,

(i) for the inspection of schools maintained by it whether wholly from the municipal fund or by grants-in-aid therefrom ;

(ii) for the training of teachers for schools aided or maintained from the municipal fund ;

(iii) for the instruction and training of persons for the practice of medicine, or of vaccination, or of any technical or industrial calling ; [ ]

(iv) for the maintenance of public libraries, reading rooms, gymnasia or any other institutions connected with the diffusion of education, which may be approved by the [1][State] Government] ; [1-a] [and

(v) for the opening and maintenance hostels for students]

Extraordinary expenditure.

53. A municipal council may with the sanction of the [1][State Government].

(1) contribute towards the expenses of any public exhibition, ceremony or entertainment in the municipality ;

(2) defray the cost of the preparation and presentation of addresses to persons of distinction visiting the municipality ;

(3) contribute to any charitable fund or to a fund for the defence of the municipality, *[or India] or to the funds of any institution for the relief of the poor or the treatment of disease or infirmity or the reception of diseased or infirm persons or the investigation of the causes of disease ;

(4) pay a conveyance allowance to the chairman or vice-chairman;

(5) pay the expenses of the chairman, members of the council and municipal officers and servants travelling on municipal business ; and

(6) [2][defray] any other extraordinary charges.

Receipts and payments.

54. All moneys received by the council shall be lodged in the nearest Government treasury or with the sanction of the [1][State Government], in a bank :

Provided that the Municipal Council may, with the sanction of the [1][State Government] invest any sums not required for immediate use either in a Government savings bank or in Government securities, or in any other security which may be approved by the [1][State Government].

55. (1) [3][All orders or cheques against the municipal fund shall be signed by the [4][executive authority], or by some person duly authorized in this behalf by him]. The treasury or bank in which

LEG. REF.

1. Vide foot-note No. 1 on page 258.

1-a. Item (v) added by the Education Department Notification, dated 26th October, 1951.

2. This word was inserted by the Second Schedule to the Madras Repealing and Amending Act, 1938 (Madras Act XIII of 1938).

*Substituted for the words "or India or the Empire", by A.A.O., 1950.

3. This sentence was substituted for the original first two sentences by S. 172 of the Madras District Municipalities (Amendment) Act 1930 (Madras Act X of 1930).

4. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

the fund is lodged shall, so far as the funds to the credit of the council admit, pay all orders or cheques against the fund which are so signed.

(2) If the council shall have given previous authority in writing such treasury or bank may at once pay out of the municipal fund without such order or cheque any expense which the [1][State Government] [2][have incurred] on behalf of the council.

Audit, surcharge and disallowance.

56. The [3][executive authority] shall submit all accounts to auditors as required by them.

57. The auditors may—

*[(*a*) by summons in writing, require the production, of any book, deed, contract, account, voucher, receipt or other document the perusal or examination of which they consider necessary] ;

(*b*) by summons in writing require any person having the custody or control of any such document or accountable for it to appear in person before them ;

(*c*) require any person so appearing to make and sign a declaration with respect to such document or to answer any question or to prepare and furnish any statement relating thereto.

58. The auditors shall—

(*a*) report to the council any material impropriety or irregularity which they may observe in the expenditure, or in the recovery of moneys due to the council or in the municipal accounts ;

(*b*) furnish to the council such information as it may require concerning the progress of their audit ;

(*c*) report to the council any loss or waste of money or other property owned by or vested in the council by neglect or misconduct, with the names of persons, directly or indirectly, responsible for such loss or waste; and

(*d*) submit to the council a final statement of the audit and a duplicate copy thereof to the [1][State Government] within a period of three months from the end of the financial year, or within such other period as the [1][State Government] may notify.

59. The [3][executive authority] shall forthwith remedy any defects or irregularities that may be pointed out by the auditors and report the same to the council.

60. (1) The auditors may disallow every item contrary to law and surcharge the same on the person making, or authorizing the making of, the illegal payment ; and may charge against any person responsible therefor the amount of any †[deficiency, loss or unprofitable outlay incurred], by the negligence or misconduct of that person or of any sum which ought to have been but is not brought into account by that person and shall, in every such case, certify the amount due from such person.

[*Explanation* :—It shall not be open to any person whose negligence or misconduct has caused or contributed to any such deficiency or loss, to contend that notwithstanding his negligence or misconduct the deficiency or loss would not have occurred but for the negligence or conduct of some other person] [*Explanation added by L.A.D. Notification No.* 427, *dated* 22*nd June*, 1943, *re-enacted permanently by Notification, dated* 26*th April*, 1948.]

(2) The auditors shall state in writing the reasons for their decision in respect of every disallowance, surcharge or charge and furnish by registered post a copy, thereof to the person against whom it is made.

(3) If the person to whom a copy of the auditor's decision is so furnished refuses to receive it, he shall nevertheless be deemed to have been duly furnished with a copy of such decision within the meaning of sub-rule (2). The period of fourteen days fixed in rules 61 and 62 shall be calculated from the date of such refusal.

LEG. REF.

1. The words "Provincial Government" were substituted for the words 'Local Government' by paragraph 4 (1) of the Government of India (Adaptation of Indian Laws) Order, 1937; the word "State" was substituted for "Provincial" by A.L.O., 1950.

2. These words were substituted for the words 'has incurred' by the Schedule to the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

*Substituted by L.A.D. Notification No. 647, dated 26th June, 1939.

3. These words were substituted for the word 'Chairman' by S. 17 (1) of Madras Act, XV of 1933.

†Substituted by L.A.D. Notification No. 657, dated 26-6-1939.

Sch. IV Rr. 56 *and* 58.—Re-opening of audits—Validity of.—The rules provide for one recurring audit only, as the result of which defaulters can be charged or surcharged. They do not provide for extraordinary audits or the re-opening of audits when once they have been closed. The rule in England is that if an act, which prescribes the holding of periodical audits, omits to give power to direct the holding of an extraordinary an account which has been audited and closed at one of the periodical audits cannot be re-opened. So an extraordinary audit of municipal accounts and a surcharge certificate based thereon are not valid. 34 L.W. 697=1931 M.W.N. 994.

[1][61. (1)] Any person aggrieved by disallowance, surcharge or charge made may, within fourteen days after he has received or been served with the decision of the auditor, either—

(a) apply to the principal civil court of original jurisdiction to set aside such disallowance, surcharge or charge and the court, after taking such evidence as is necessary, may confirm, modify or remit such disallowance, surcharge or charge with such orders as to costs as it may think proper in the circumstances ; or

(b) in lieu of such application may appeal to the [2][State Government] who shall pass such orders as they think fit.

[3][Where an application is made to the court under clause (a), the auditor shall be the sole respondent thereto, and the applicant shall not be entitled to make either the Government of Madras or any other person a party to the proceedings.]

[1][(2) From any decision of the Court under clause (a) of sub-rule (1), an appeal shall lie to the High Court.]

62. Every sum certified to be due from any person by auditors under this Act shall be paid by such person to the [4][executive authority], within fourteen days after the intimation to him of the decision of the auditors unless within that time such person has appealed to the court or to the State Government] against the decision ; and such sum if not so paid, or such sum as the court or the [2][State Government] shall declare to be due, shall be recovered on an application made by the [4][executive authority], to the court in the same way as an amount decreed by the court.

[5][63. Notwithstanding anything contained in these rules, the (State) Government may at any time direct that the recovery of the whole or any part of the amount certified to be due from any person by auditors under this Act shall be waived if in their opinion such a course in necessary considering all the circumstances of the case].

APPENDIX A.[6]

Distraint warrant.

[*See rule* 30 (4).]

Warrant No.

To

(Name of officer charged with execution of warrant.)

(State tax or taxes due and premises, if any, in respect of which the tax or taxes are due.)

LEG. REF.

1. R. 61 was re-numbered as sub-R. (1) and that rule as so re-numbered new sub-R. (2) was added by L.A.D. Notification No. 657, dated 26-6-1939.
2. Vide foot-note No. 1 on page 260.
3. This paragraph was inserted by Notification No. 307, Local Administration, dated 6th November, 1937, published on page 587 of Part I-A of the *Fort St. George Gazette*, dated 9th November, 1937.
4. Substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).
5. Rule 63 was added by L.A.D. Notification No. 657, dated 26th June, 1939.
6. Appendices A, B and C were substituted for the original appendices by S. 173 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

Sch. IV, R. 61.—A writ of *certiorari* does not lie in respect of an order of surcharge which is alleged to be illegal. The remedy given by R. 61 of Sch. IV precludes such a writ being issued. 49 M. 49=1926 M.W.N. 467=92 I.C. 918=1926 M. 297. An extraordinary or supplemental audit not being one contemplated by the rules in Sch. IV a suit by the plaintiff aggrieved by an order of surcharge based thereon is not affected by the remedies provided by those rules, even if those remedies be held to be substituted for the ordinary remedy by suit in cases governed by the rules. Fot rho same reason that the surcharge is not governed by the rules, the fact that the plaintiff appealed to Government would not constitute an election on his part and disable him from seeking relief in the Courts. 34 L.W. 697=1931 M.W.N. 994.

Sch. IV, R. 62.—See 49 M. 49=1926 M.W.N. 467=92 I.C. 918=1926 M. 297. —The right of appeal created by a new (R. 62 of Sch. IV of Madras Act V of 1920 against an order of the District Court to set aside a surcharge order) will not affect orders passed on petitions instituted before the rule came into force (July 1939) though the orders on such petitions were passed later. There is no logical distinction between a right of appeal and the right to a final judgment without an appeal. Both are vested rights and cannot be deemed to be affected by later enactments or rules retrospectively unless suh an enactment or rule is given retrospective operation either expressly or by necessary intendment. I.L.R. (1943) Mad. 501=207 I.C. 612=55 L.W. 778=1942 M.W.N. 755=A.I.R. 1943 Mad. 208 (1)=(1942) 2 M.L.J. 667.

Sch. IV, App. A.—A warrant issued under the Madras District Municipalities Act must bear the signature of the Chairman of the Municipality and if he is illite-

WHEREAS of has not paid or shown sufficient cause for the non-payment of the sum of Rs. A. P. due for the tax or taxes noted above for the ending 19 , although the said sum has been duly demanded from the said and fifteen * days have elapsed since such demand was made : This is to command you to demand the said sum of Rs. A. P. together with annas two for warrant fee, failing payment of which you are to distrain the goods and chattels of the said (or, as the case may be, any goods and chattels found on the premises referred to), to the amount of the said sum of Rs. A. P. together with Rs. A. P. for warrant fee and distraint fee making together a sum of Rs. A. P. and such further sum as may be sufficient to defray the charges of keeping and selling such distraint; and if within seven days next after such distraint, the amount due on account of the said tax or taxes and fee shall not be paid, together with such further sum as may be sufficient to defray the charges of keeping such distraint, to sell the said goods and chattels under orders to be hereafter issued by me, and to remit to the municipal office the sale-proceeds of the distrained property, out of which the amount due on account of the said taxes and fees, *viz.*, Rs. A. P. and the charges on keeping, and selling such distraint will be deducted and credited to the municipal fund, and the surplus, if any, returned to the owner of the goods and chattels distrained. If distraint or sufficient distraint cannot be found of the goods and chattels of the said , you are to certify the same to me together with this warrant.

(Signature of the [1][executive authority]).

STATION

Date 19 .

[* Three days in case of tax on servants.]

APPENDIX B.[2]

Form of Inventory and Notice.

[*See* rule 31 (1) (*c*).]

(State particulars of goods and chattels seized.]

Take notice that I have this day seized the goods and chattels specified in the above inventory for the sum of Rs. A. P. due for the tax or taxes mentioned in the margin for the ending 19 ; and that unless you pay into the office of the municipality of the amount due together with the warrant fee, the distraint fee and cost of keeping the goods and chattels, within seven days from the date of this notice, the goods and chattels will be sold on the day of 19 , at the municipal office or at such other place as the [1][executive authority] may direct ; and that the goods and chattels may be sold at any previous date if they are liable to speedy and natural decay.

(Signature of the officer executing the warrant of distress.).

STATION

Date 19 .

APPENDIX C.[2]

Table of Fees payable on Distraints.

[*See* rule 33 (1).]

Sum distrained for.

Sum distrained for	Fees. Rs.	A.	P.
Under 1 Rupee ..	0	4	0
1 Rupee and over but under 5 rupees ..	0	8	0
5 rupees " " 10 " ..	1	0	0
10 " " " 15 " ..	1	8	0
15 " " " 20 " ..	2	0	0

LEG. REF.

1. These words were substituted for the word 'chairman' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

2. Appendices A, B and C were substituted for the original appendices by S. 173 of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of (1930).

rate, his mark can be used. A warrant issued under the Madras District Municipalities Act and to which the facsimile stamp of the signature of an ex-chairman was filed by the peons is invalid. A distrainer under a warrant issued under the Madras District Municipalities Act has no right to take away the front door of the house which will render the house unsafe and, consequently, the occupier of the house does not exceed his right of private defence by resisting such an act of the distrainer. 31 L.W. 205=1930 M.W.N. 172=1930 Cr. C. 335. (1)=1930 M. 430 (1)=58 M.L.J. 193.

			Rs.	A.	P.
20 Rupees and over but under	25 rupees	..	2	8	0
25 ,, ,, ,,	30 ,,	..	3	0	0
30 ,, ,, ,,	35 ,,	..	3	8	0
35 ,, ,, ,,	40 ,,	..	4	0	0
40 ,, ,, ,,	45 ,,	..	4	8	0
45 ,, ,, ,,	50 ,,	..	5	0	0
50 ,, ,, ,,	60 ,,	..	6	0	0
60 ,, ,, ,,	70 ,,	..	7	8	0
80 ,, ,, ,,	100 ,,	..	9	0	0
100 rupees and over		..	10	0	0

The above charge includes all expenses, except when peons are kept in charge of property distrained, in which case three annas must be paid daily for each peon.

SCHEDULE V.

PURPOSES FOR WHICH PREMISES MAY NOT BE USED WITHOUT A LICENCE UNDER S. 249.

[*See* S. 249.]

[1][(*a*) washing soiled clothes or keeping soiled clothes for the purpose of washing them or keeping washed clothes ;]

(*b*) boiling paddy or camphor ;

(*c*) melting tallow or sulphur ;

[(*cc*) Storing or keeping blankets, for the purpose of hiring]; (*Inserted by G.O. Ms. No.* 893, *L.A., dated* 27*th April*, 1959.).

(*d*) storing or otherwise dealing with manure, offal, blood, bones, rags, hides, fish, horns or skins ;

(*e*) washing or drying wool or hair ;

(*f*) making fish-oil ;

(*g*) making soap, dyeing ; boiling or pressing oil ; [2][burning] bricks ; tiles ; pottery or lime ;

(*h*) manufacturing or distilling sago, manufacturing artificial manure, [2-a] [manufacturing beedies or cigars;]

(*i*) manufacturing gunpowder or fireworks ;

(*j*) keeping a public halting-place, choultry or other rest-house for travellers (other than a choultry or rest-house maintained by the Government or a local authority), a hotel, restaurant, eating-house, coffee house, boarding house or lodging house (other than a students' hostel under public or recognized control) ;

LEG. REF.

1, Substituted for original clause by Health Department Notification dated 27-11-1951.

2. This word was substituted for the word "making" by S. 174 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2-a. Suctituted by Public Health Department Notification No. 293 dated 3-7-1944, re-enacted permanently by Public Health Department Notification, dated 28-3-1949.

Sch. V, Cl. (*d*)—See 1936 M.W.N. 1074.

Sch. V, Cl. (*j*).—"Place"—See (1958) 2 M.L.J. 180=(1958) M.L.J. (Cr.) 628, cited supra under S. 249—Cl. (j). "Lodging house"—Hotel Keeper registered as keeper of lodging house under Madras Public Health Act—Duty to take out licence under Municipalities Act and to pay licence fee —Madras District Municipalities (Third Amendment) Act (XXXVIII of 1942), and Madras Public Health Act (III of 1939), S. 3 (21). The municipality is statutorily authorised to levy licence fees and it cannot be prevented from levying them. In any case, where it exceeds its powers, the citizens can always approach the Courts. It would be absurd to direct the municipality generally not to transgress the law. It is clear from the terms of the Madras District Municipalities Act that all that the Municipality is entitled to do is to levy a fee and not a tax. A fee is in the nature of a charge by way of compensation for services rendered to a party from whom it is collected. It is true that there can be no exact coincidence between the amount collected by the Municipality and the amount actually expended by it for exercising supervision and for other incidental purposes. Still there should be a substantial and reasonable agreement between the charges it levies and the services it renders. It is true that the Court may not be justified in taking upon itself the power conferred by the Act upon the Council, that is to say, the power of determining the proper amount of the fee, but where an enhancement (as made in the

(*jj*) keeping a shaving or hair-dressing saloon ;

(*k*) keeping together twenty or more sheep or goats or ten or more pigs or head of cattle ;

(*l*) preparing flour or articles made of flour for human consumption or sweetmeats ;

(*m*) manufacturing ice or aerated waters ;

[1][(*mm*) brewing beer, manufacturing arrack or other spirit containing alcohol (whether denatured or not), by distillation ;]

(*n*) selling or storing timber, firewood, thatching materials, hay, grass, straw, fibre, coal or charcoal ;

[2][(*o*) selling wholesale or retail, or storing for wholesale or retail trade or for purposes other than private or domestic use, grain, groundnut [3](tamarind), chillies, jaggery, pulses, flour, bran, oil-cakes or agricultural produce which is likely to attract rats ;]

Andhra Amendment Cl, (*o*)—Andhra G. O. MS. No. 430, Local Administration, dated 20th March, 1956, has substituted the following clause for Cl. (*o*) of Sch. V:—

"(*o*) Selling wholesale or retail, or storing for wholesale or retail trade or for purposes other than private or domestic use, rice and broken rice, grain, groundnut, tamarind, chillies, jaggery, pulses flour, brain, oil-cakes, or agricultural produce in including fruits and horticultural produce which is likely to attract rats-"

(*p*) [manufacturing jaggery, or sugarcandy or syrup otherwise than as a cottage industry by tappers or persons in enjoyment of the trees carried on in their own premises].

(*Substituted by P.H.D. Notification, dated 31st March, 1939.*)

[4][(*q*) storing any explosive or combustible materials ;]

[Provided that no licence shall be required for storing petroleum and its products in quantities exceeding those to which the operation of this Act is limited by the provisions of Petroleum Act 1934, or the rules or notifications issued thereunder ;] (*Added by P.H.D., Notification, No. 425, dated 29th September, 1944.*)

[(*qq*) selling cotton wholesale or retail or storing cotton for wholesale or retail trade or for conversion into yarn ;] (*Inserted by P.H.D., Notification, No. 176, dated 15th April, 1944.*)

[4][(*r*) manufacturing anything from which offensive or unwholesome smells arise ;]

[4][(*s*) using for any industrial purpose any fuel or machinery [5][other than such machinery as may, by notification, be exempted by the *(State) Government from time to time] ; and

[4][(*t*) in general, doing in the course of any industrial process anything which is likely to be dangerous to human life or health or property ;]

LEG. REF.

1. Inserted by P.H.D. Notification No. 381, dated 18-10-1946.
2. Substituted by P.H.D. Notification No. 30, dated 18-12-1944, re-enacted permanently with retrospective effect on and from 30-4-1948 by Notification, dated 28-3-1949, for Cl. (o) as amended previously.
3. Inserted by P.H.D. Notification No. 254, dated 12-6-1945.
4. Cls. (q), (r), (s) and (t) were substituted for the original Cl. (q) by S. 174 (ii) of Madras Act X of 1930.
5. Inserted by L.A.D. Notification No. 1171, dated 17-11-1941.

*Substituted by A.L.O., 1950 for "Provincial."

instant case) is made, the Court can declare the enhancement illegal, the result of which would be to restore the fee formerly leviable. The refund, therefore, directed by the lower appellate Court must be upheld as perfectly proper. (1929) 57 M.L.J. 71, referred to. Any hotel, restaurant, eating-house, coffee-house, boarding-house would seem to fall within the definition of a 'lodging house' as defined by the Madras Public Health Act, although the words 'restaurant', eating-house, coffee-house, do not occur in the definition. A 'lodging-house' is however not defined in the District Municipalities Act. Where a question has arisen whether a person having been registered as the keeper of a lodging house under the Public Health Act, 1939, should also take out a licene under the District Municipalities Act. Held, the person (plaintiff) can be described as a keeper of a lodging house within the meaning of the definition of a 'lodging-house' in the Madras Public Health Act and that the Proviso to S. 28 of the Madras District Municipalities (Third Amendment) Act, 1942, Act (XXXVIII of 1942), exempts him from the necessity for taking a licence under the Madras District Municipalities Act. The plaintiff is not liable to pay registration fee as well as licence fee in respect of his premises. (1959) 1 An.W.R. 203.

Sch. V, Cl. (*o*).—Rice and broken rice do not come within the meaning of the term "grain" in Cl. (o). 23 L.W. 31=92 I.C. 610=49 M. 219=1926 M. 251=51 M.L.J. 62. No licence is required of a commission agent. 93 I.C. 701=1926 M. 722=30 M. L.J. 654.

Sch. V, Cl. (*q*).—The machinery contemplated in the Act is machinery worked by power, such as steam, water or electric power; and machinery worked by hand, such as handlooms or sewing machines is exclud-

Provided that no licence shall be required for the storage of timber, firewood, thatching materials, hay, grass, straw, fibre, or coal or [1][for boiling paddy or for keeping soiled clothes or washed clothes or for washing soiled clothes when such storage or boiling, keeping or washing is] for private use.

[Provided further that no licence shall be required under this Act for a lodging house as defined in the Madras Public Health Act, 1939, if the keeper thereof has been registered under that Act.] (*Added by Madras Act XXXVIII of* 1942.)

SCHEDULE VI.

LIST OF DANGEROUS DISEASES.

[*See* section 287.]

Acute influenzal pneumonia.
Anthrax.
Chickenpox.
Cholera.
Diphtheria.
Enteric fever.
Glanders.
Leprosy.
Plague.
Smallpox.
Tuberculosis.
Typhoid fever.
Influenza.
Relapsing fever.
Rabies.

SCHEDULE VII.

ORDINARY PENALTIES.

[*See* section 213.]

Section or rule. (1)	Sub-section or clause. (2)	Subject. (3)	Fine which may be imposed. (4)
[2][30	(1)	Interested councillor voting or taking part in discussion.	Fifty rupees.]
88	..	Failure to give notice of transfer of title or to produce documents.	Do.
89	[3][(1)]	Failure to send notice to [4][executive authority] after completion of construction or reconstruction of building.	Do.
91	(1)	Failure of owner or occupier to furnish return of rent, etc.	One hundred rupees.

LEG. REF.

1. Substituted by P.H.D. Notification dated 27-11-1951.

2. This item was inserted by S. 175 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. This figure was entered by S. 175 (ii) ibid.

4. These words were substituted for the word "chairman" by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

---

ed. 92 I.C. 873=27 Cr. L.J. 361=23 L.W. 413=1926 M.W.N. 463=1926 M. 430. Looms of the sort which the weaver works with his hands and feet known as a "maggom" or European looms are not "machinery" within the mischief of Sch. V, Cl. (q). 92 I.C. 873=27 Cr. L.J. 361=23 L.W. 413=1926 M.W.N. 463=1926 M. 430. (See also 50 M.L.J. 384 and 53 M.L.J. 633 (F.B.) Handlooms worked with hand and not with steam power or such other power cannot be called machinery under Cl. (q). 51 M. 601=27 L.W. 728=108 I.C. 740=1928 M. 683=54 M.L.J. 454. The last clause of Cl. (q) of Sch. V of the Madras Act V of 1920 qualifies each of the clauses preceding it and not merely the last clause. The object seems to bring under municipal control by the method of issuing licences, the keeping or using of things which are dangerous to human life, health or property. 45 M.L.J. 555=18 L.W. 618 1923 M.W.N. 767=33 M.L.T. (H.C.). 234=75 I.C. 691. Conversion of paddy into rice is an industrial process within the meaning of the clause. (Ibid.) Ordinarily any large machinery is dangerous to human life but it cannot be presumed that any particular machinery is. (Ibid). Machinery likely to be dangerous to human life in Sch. V, Cl. (p) is not confined to machinery dangerous to outside public. A rice-mill is a machinery likely to be dangerous to human life within the meaning of Sch. V (q) of the Act, and the use thereof without licence is punishable under Ss. 249 and 338 thereof. 59 M. 845=22 L.W. 768=101 I.C. 667=1927 M. 602=52 M.L.J. 653.

Section or rule. (1)	Sub-section or clause. (2)	Subject. (3)	Fine which may be imposed. (4)
96	..	Failure of owner or occupier to obey requisition to furnish list of persons carrying on profession, art, etc.	One hundred rupees
97	..	Failure of employer or head of an office, firm or company to obey requisition to furnish list of persons in his employ.	Do.
102	[1][(2)]	Failure of occupier to obey requisition to furnish statement of vehicles and animals liable to taxation or furnishing incorrect statements.	Ten rupees.
104	..	Failure to obey order to affix and register number of carriage.	Do.
105	(2)	Failure of owner to register cart or other vehicle.	Do.
	(3)	Failure to have or keep registration number affixed to cart.	Do.
[2][109		Failure to furnish lists of servants employed ..	Fifty rupees.]
[3][	*	* * * * *	]
[4][127	..	Trespassing on premises connected with the water supply.	Fifty Rupees.
130	..	Failure to maintain house connexions in conformity with by-laws and regulations.	Do.
131	(2)	Failure to obey requisition to make house connexion.	Do.
138	..	Failure to maintain house-drains, etc., in conformity with by-laws and regulations.	Do.
139	(2) & (3)	Failure to obey requisition as to house drainage.	Do.
140	(1) (*b*)	Failure to obey direction as to limited use of drain or notice requiring construction of distinct drain.	Do.
142	..	Unlawful construction of building over public drain.	One hundred rupees
143	[5][*]	Failure to obey requisition regarding culverts etc., or to keep them free from obstruction.	Fifty rupees.
144	..	Failure to obey requisition to maintain troughs and pipes for catching, etc., water from roof or other part of building.	Do.
146	..	Failure to obey requisition to provide latrine or to remove latrine to another site and failure to keep latrines clean and in proper order.	Do.
147	..	Failure to provide latrines for premises used by large numbers of people or to keep them clean and in proper order.	One hundred rupees.
148	..	Failure to obey requisition to provide latrines for market, cattle-stand or cartstand or to keep them clean and in proper order.	Do.
149	..	Failure to construct latrines so as to screen persons using them from view.	Twenty-rupees.

LEG. REF.

1. This figure was entered by S. 175 (iii) of the Madras District Municipalities (Amendment) Act (X of 1930).

2. This item was inserted by S. 175 (iv) ibid.

3. The item relating to S. 113 was omitted by Sch. I to the Madras Motor Vehicles Taxation Act, 1931 (Madras Act III of 1931).

4. These figures were substituted for the figures "119" by S. 175 (v) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

Andhra amendment.—Andhra Act IV of 1956 has substituted the word "connexion" and "connexions" respectively in the entries relating to S. 130 and S. 131 (a) for the words "house connections" and "house connexion" in column 3.

5. The figure (2) was omitted by S. 175 (vi), ibid.

Section or rule. (1)	Sub-section or clause. (2)	Subject. (3)	Fine which may be imposed. (4)
151	..	Making connexion with mains without permission.	Two hundred rupees.
157	..	Improper disposal of carcasses, rubbish and filth.	Ten rupees.
[1][158	..	Allowing rubbish or filth to accumulate on premises for more than twenty-four hours, etc.	Twenty rupees.]
159	..	Allowing filth to flow in streets ..	Ten rupees.
160	..	Using cart without cover in removal of filth, etc.	Twenty rupees.
161	..	Throwing rubbish or filth into drains ..	Do.
167	..	Building within regular lines of street ..	One thousand rupees
[2][168	(1)	Failure to obey orders to set back buildings ..	Five hundred rupees
173	..	Unlawful displacement, etc. of pavement or fences, posts and other materials of public street.	Fifty rupees.
[3][	(*)	(*)	(*)
[4][175	..	Failure to provide roads, etc., on building sites prior to disposal.	[Two hundred rupees][5]
176	(5)	Unlawful making or laying of new private street.	Five hundred rupees.
178	..	Failure to obey requisition to metal, etc. private street.	One hundred rupees.
[6][180]	..	Building wall or erecting fence, etc., in a public street.	Do.
[7][180-A	..	Obstructing a person in the use of a street referred to in section 180-A.	One hundred rupees.
181	..	Allowing doors, ground-flour windows, etc., to open outwards without licence or contrary to notice.	Twenty rupees.
182	..	Failure to remove permanent encroachment ..	Two hundred rupees.
183	..	Failure to remove temporary encroachment ..	Fifty rupees.
185	..	Unlawful removal of bar, or shoring timber, etc., or removal or extinction of light.	Twenty rupees.
186	..	Unlawful making of hole or placing of obstruction in street.	Fifty rupees.
187	..	Construction, etc. of building without licence where street or footway is likely to be obstructed.	Do.
	..	Failure to fence, etc., such building while under repair or failure to remove obstruction.	Do.
188	..	Failure to remove obstruction caused in stree by fall of trees, etc., within 12 hours of fall.	Do.
189	(3)	Unlawful destruction, etc., of name of street.	Twenty rupees.
190	(2)	Unlawful destruction, etc., of number of building.	Five rupees.

LEG. REF.

1. This item was substituted for the original by S. 175 (vii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. This item was iserted by S. 175 (viii) ibid.

3. The entries relating to S. 173-A were omitted by S. 6 (iv) of the Madras Traffic Control Act, 1938 (Madras Act V of 1938).

4. This item was inserted by S. 175 (ix) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

5. Substituted for the word "do" by Madras Act XIV of 1951.

6. These figures were substituted for the figuures "183" by S. 175 (x) ibid.

7. This item was inserted by S. 5 of the Madras / District Municipalities (Amendment) Act, 1929 (Madras Act XVII of 1929).

Section or rule. (1)	Sub-section or clause. (2)	Subject. (3)	Fine which may be imposed. (4)
190	(3)	Failure to replace number when required to do so.	Twenty rupees.
[1][193	(5)	Constructing or reconstructing building contrary to declaration issued by council.	Two hundred rupees.
[1][194	(1)	Failure to obey requisition to round or splay off buildings at corners of streets.	One hundred rupees
195	..	Construction of external roots, etc., with inflammable materials.	Fifty rupees.
196	..	Construction of door or window, etc., to open outwards on public street.	Twenty rupees.
214	..	Failure to keep external walls of premises in proper repair.	Do.
218	(1)	Failure to obey requisition to take down repair or secure dangerous structure.	Five hundred rupees.
219	(1)	Failure to obey requisition to secure to lop or cut down dangerous trees.	Fifty rupees.
220	..	Failure to obey requisition to repair, etc., tank or other place dangerous to passers by or persons living in neighbourhood.	Do.
221	..	Failure to obey requisition to stop dangerous quarrying.	One hundred rupees.
222	..	Failure to obey notice regarding precautions against fire.	Do.
223	(1)	Constructing well, etc., without permission ..	Fifty rupees.
	(3)	Failure to obey notice to fill up or demolish well, etc.	Do.
224	..	Failure to obey requisition to fill up, etc., tank or well, or drain off water, etc.	Do.
225	..	Cultivating contrary to prohibition or regulations.	Five hundred rupees.
226	..	Failure to obey requisition to cleanse or close, etc., tank, well or other source of water used for drinking.	Fifty rupees.
[2][227-A	..	Obstructing a person in the use and enjoyment of a well, tank or reservoir referred to in section 227-A.	One hundred rupees.
228	..	Unlawful washing and fishing in river. etc., after prohibition or contrary to regulations.	[3][Fifty rupees.]
230	..	Washing of clothes by washermen at unauthorized places.	[3][Twenty rupees.]
231	..	Defiling water of tanks, etc. ..	[3][Fifty rupees.]
232	..	Failure to obey requisition to enclose, clear or cleanse untenanted premises.	Do.
233	..	Failure to obey requisition to clear or cleanse, etc., building or land in filthy state or overgrown with noxious vegetation.	Do.
234	..	Failure to obey requisition to fence building or land or trim, prune or cut hedges and trees or lower an enclosing wall.	Do.
235	..	Failure to obey requisition to lime-wash or otherwise cleanse building.	Do.

LEG. REF.

1. These items were inserted by S. 175 (xi) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. This item was inserted by S. 5 of the Madras District Municipalities (Amendment) Act, 1929 (Madras Act XVII of 1929).

3. These entries were substituted for the original by S. 175 (xii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

Section or rule. (1)	Sub-section or clause. (2)	Subject. (3)	Fine which may be imposed. (4)
236	..	Failure to obey requisition to execute work or take other action with respect to insanitary buildings.	One hundred rupees in the case of building and fifty rupees in the case of hut.
237	(2)	Using or allowing the use of buildings unfit for human habitation after prohibition.	Twenty rupees for each day.
	(4)	Failure to obey requisition to demolish the same.	Do.
238	(1)	Allowing overcrowding in building after order to abate the same.	Ten rupees for each day.
238	(4)	Failure to obey requisition to vacate overcrowded building or room.	Do.
239	..	Feeding animals on filth ..	Fifty rupees.
240	..	Unlawful keeping of animal so as to be a nuisance or [danger][1].	Ten rupees.
245	..	Use of place as stable, cattle-stand, etc., without licence or contrary to licence.	Fifty rupees,
246	..	Contruction or maintenance of stable cattle-shed, etc., contrary to Act or subsidiary legislation.	Do.
247	..	Use of place as stable, cattle-shed, etc., contrary to notice issued by [2][executive authority.]	Two hundred rupees.
[3][249	(1)	Using a place for any of the purposes specified in schedule V without licence or contrary to licence.	One hundred rupees.]
250	..	Unlawful erection of factory, workshop, etc.	One thousand rupees.
251	..	Disobedience of order regarding abatement of nuisance.	One hundred rupees.
255	..	Use of place as slaughter-house without licence or contrary to licence.	Two hundred rupees.
257	..	Slaughter of animals for sale or food or skinning or cutting up carcasses or drying skin so as to cause a nuisance.	Twenty rupees for every animal, carcass or skin.
258	..	Carrying on milk trade without licence or contrary to licence.	Fifty-rupees.
[4][259	..	Obstructing a person in the use of a market referred to in section 259.	[Rs. 100.]
261	..	Sale or exposure for sale in public market of animal or article [5][* * *] without licence or contrary to licence.	Twenty rupees.
262	..	Opening or keeping open private market without licence or contrary to licence.	Five hundred rupees.
263	..	Sale or exposure for sale of animal or article in unlicenced private market.	Twenty rupees.
264	..	Failure to obey direction to construct approaches, drains, etc., to private markets or to pave them, etc.	Fifty rupees.
265	(2)	Opening or keeping open of private market after suspension or refusal of license for default to carry out works.	Twenty rupees for each day.
266	..	Nuisances in private markets ..	Twenty rupees.

LEG. REF.

1. Substituted for 'dangerous'' by Madras Act XIV of 1951.

2. These words were substituted for the word ''chairman'' by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

3. This item was inserted by S. 175 (xiii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

4. This item was inserted by S. 5 of the Madras District Municipalities (Amendment) Act, 1929 (Madras Act XVII of 1929).

5. The words ''of food'' were omitted by S. 175 (xiv) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

Section or rule. (1)	Sub-section or clause. (2)	Subject. (3)	Fine which may be imposed. (4)
269	..	Carrying on butcher's, fishmonger's or poulterer's trade without licence, etc.	One hundred rupees.
270	..	[1][Sale or exposure for sale of animal or article in public street.]	Ten rupees.
[2][270-C	..	Using a public place or the sides of a public street or public landing place, etc.	Two hundred rupees.]
[2][270-E	..	Opening or keeping open a new private cartstand without licence or contrary to licence.	Two hundred rupees.]
273	..	Preventing the [3][executive authority] or any person authorized by him from exercising his powers of entry, etc., under this section.	Fifty rupees.
275	..	Removing or in any way interfering with an animal or article secured under [4][section 274.]	Five hundred rupees.
[5][279	(1)	Opening, etc., without licence a new place for the disposal of the dead.	One hundred rupees.
281	(3)	[6][Using or allowing the use of] of burial or burning ground which has not been registered, licenced or provided.	Do.
282	..	Failure to give information of burials or burnings in burial or burning ground.	Twenty rupees.
283	(3)	Burial or burning in a place after prohibition.	One hundred rupees.
284	..	Offences in respect of corpses ..	Fifty rupees.
285	..	Discharge of office of grave-digger or attendant at place for disposal of dead without licence.	Five rupees.
288	..	Failure of medical practitioner or owner to give information of existence of dangerous disease in private or public dwelling.	Fifty rupees.
290	..	Failure to obey requisition to cleanse or disinfect buildings or articles.	Do.
291	(3)	Washing of infected articles at unauthorized places.	Do.
292	..	Giving, lending, etc., of infected articles ..	Do.
293	..	Using water after prohibition ..	Do.
295	..	Infected person carrying on occupation ..	Do.
296	(1)	Travelling of infected person in public conveyance without taking proper precautions against spread of disease.	Do.
	(2)	Entry of infected person into public conveyance without notifying fact of infection.	Do.
	(3)	Carrying infected person in public conveyance..	Do.
297	..	Letting or sub-letting of infected building without previous disinfection, etc.	Two hundred rupees.
298	..	Failure to close place of public entertainment..	Do.
299	..	Sending infected child to school ..	Fifty rupees.
[7][301]	..	Failure to give information of small-pox ..	Do.
302	..	Person entering municipality within forty days of inoculation for small-pox without certificate.	One hundred rupees.
321	(8)	Failure to produce licence on request ..	Five rupees.

LEG. REF.

1. These words were substituted for the words "sale of article in public streets" by S. 175 (xv) (a) by Madras District Municipalities (Amendment) Act (X of 1930).

2. These items were inserted by S. 175 (xv) (b) ibid.

3. These words were substituted for the word "chairman" by S. 17 (1) of the Madras District Municipalities (Amendment) Act. 1933 (Madras Act XV of 1933).

4. This word and these figures were substituted for the word and figures "section 269" by S. 175 (xvi) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

5. This item was inserted by S. 175 (xvii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

6. Substituted by Madras Act XIV of 1951.

7. These figures were substituted for the figures "300" by S. 175 (xviii) ibid.

Section or rule. (1)	Sub-section or clause. (2)	Subject. (3)	Fine which may be imposed. (4)
[1][325	..	Failure to obey summons ..	Fifty rupees.]
333	(1)	Failure of occupier to obey requisition to permit owner to comply with provisions of Act.	Fifty rupee for each day.
359	..	Obstructing or molesting municipal council, etc.	Fifty rupees.
360	..	Removing mark set up for indicating level, etc.	Do.
361	..	Removal, etc., of notice exhibited by or under orders of the council.	Do.
362	..	Unalwful removal of earth, sand or other material from land vested in the council or deposit of matter or encroachment in or on river estuary, etc.	Twenty rupees.
Rule 57 of Schedule IV	..	Failure to obey requisition by auditors to attend, give evidence or produce document.	Fifty rupees.

SCHEDULE VIII.

PENALTIES FOR CONTINUING BREACHES.

[*See* section 313.]

Section or rule. (1)	Sub-section or clause. (2)	Subject. (3)	Daily fine which may be imposed. (4)
130	..	Failure to maintain house-connexions in conformity with by-laws and regulations.	Five rupees.
131	(2)	Failure to obey requisition to make house-connexion.	Do.
138	..	Failure to maintain house-drains, etc., in conformity with by-laws and regulations.	Ten rupees.
139	(2) and (3)	Failure to obey requisition as to house drainage.	Do.
144	..	Failure to obey requisition to maintain troughs and pipes for catching, etc., water from roof or other part of building.	Do.
146	..	Failure to obey requisition to provide latrine or to remove latrine to another site and failure to keep latrines clean and in proper order.	Do.
147	..	Failure to provide latrines for premises used by large numbers of people or to keep them clean and in proper order.	Twenty rupees.
148	..	Failure to obey requisition to provide latrines for market, cattle-stand or cart-stand or to keep them clean and in proper order.	Do.
[2][167]	..	Building within regular lines of street .. [3][* * * * *]	One hundred rupees.

LEG. REF..

1. This item was inserted by S. 175 (xix) of the Madras District (Amendment) Act (X of 1930).

Andhra amendment.—In column 3 of the entries relating to Ss. 130 and 131 (a) of Sch. VIII, Andhra Act IV of 1956 has substituted the words "connexions" and "connexion" for the words a "house connexions" and "house connexion", respectively.

2. These figures were substituted for the figures "168" by S. 176 (i) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

3. The entries relating to S. 174-A were omitted by S. 6 (iv) of the Madras Traffic Control Act, 1938 (Madras Act V of 1938).

Sch. VIII: Installing Machine without licence — Daily fine — Impropriety.—The permission to instal a flour mill granted to the petitioner was suspended by the Collector on 3-6-1929 and the petitioner was charg-

Section or rule. (1)	Sub-section or clause. (2)	Subject. (3)	Daily fine which may be imposed. (4)
175	..	Failure to provide roads, etc.. on building sites prior to disposal.	"Five rupees." (Inserted by Madras Act XXXVIII of 1942).
[	*	* * * *	* *]
182	..	Failure to remove permanent encroachment ..	Ten rupees.
183	..	Failure to remove temporary encroachment ..	Five rupees.
186	..	Unawful making of hole or placing of obstruction in street.	Ten rupees.
187	..	Construction, etc., of building without licence where street or footway is likely to be obstructed	Do.
[1][194	(1)	Failure to obey requisition to round or splay off buildings at corners of street.	Fifty rupees.]
195	..	Construction of external roofs, etc., with inflammable materials.	[Ten rupees.][2]
214	..	Failure to keep external walls of premises in proper repair.	Do.
220	..	Failure to obey requisition to repair, etc., tank or other place dangerous to passers-by or persons living in neighbourhood.	Do.
221	..	Failure to obey requisition to stop dangerous quarrying.	Do.
222	..	Failure to obey notice regarding precautions against fire.	Do.
224	..	Failure to obey requisition to fill up, etc., tank or well or drain off water, etc.	Do.
226	..	Failure to obey requisition to cleanse or close, etc., tank, well, etc., or other source of water used for drinking.	Do.
232	..	Failure to obey requisition to enclose, clear or cleanse untenanted premises.	Do.
233	..	Failure to obey requisition to clear or cleanse, etc., building or land in filthy state or overgrown with noxious vegetation.	Do.
234	..	Failure to obey requisition to fence building or land, or trim, prune or cut hedges and trees or lower an enclosing wall.	Do.
235	..	Failure to obey requisition to lime-wash or otherwise cleanse building.	Fifty rupees.
236	..	Failure to obey requisition to execute work or take other action with respect to insanitary buildings.	Ten rupees in the case of building and five rupees in the case of hut.
240	..	Unlawful keeping of animal so as to be a nuisance or [danger].[3]	Five rupees.

LEG. REF.

*Entries relating to S. 174-A were omitted by S. 6 (iv) of the Madras Traffic Control Act, 1938 (Madras Act V of 1938.)

1. This item was inserted byy S. 176 (iii) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. These words were substituted for the word "Do." by S. 176 (iv) ibid.

3. Substituted for the word "dangerous" for Madras Act (XIV of 1951).

-ed with having disobeyed that order and run the machinery from 24-6-1929 to 19-10-1929, not only under Ss. 250 to 313 but also under Sch. VIII and for this purpose the offence was split into periods of a day: Held, the charge under Sch. VIII was not sustainable in the absence of a previous conviction under S. 313 before 24-6-1922, that in such case the accused can be convicted in respect of the same machine for the one act of installation only, that the theory of a daily offence was entirely misconceived as also the splitting of a day. The petitioner could only have been charged in one case of the full period within the knowledge of the complainant. 1931 M.W.N. 517.

PENALTIES FOR CONTINUING BREACHES—(*contd.*).

Section or rule. (1)	Sub-section or clause. (2)	Subject. (3)	Daily fine which may be imposed. (4)
245	..	Use of place as stable, cattle-stand, etc., without licence or contrary to licence.	Ten rupees.
246	..	Construction or maintenance of stable, cattle-shed etc., contrary to Act, or subsidiary legislation.	Do.
247	..	Use of place as stable, cattle-shed, etc., contrary to notice issued by *[executive authority]	Fifty rupees.
[1][249	(1)	Using a place for any of the purposes specified in Schedule V without licence or contrary to licence.	Twenty rupees.]
250	..	Unlawful erection of factory, workshop, etc. ..	One hundred rupees.
251	..	Disobedience of order regarding abatement of nuisance.	Do.
255	..	Use of place as slaughter-house without licence or contrary to licence.	Fifty rupees.
258	..	Carrying on milk trade without licence or contrary to licence.	Five rupees.
262	..	Opening or keeping open private market without licence or contrary to licence.	One hundred rupees.
263	..	Sale or exposure for sale of animal or article in unlicensed private market.	Twenty rupees.
269	..	Carrying on butcher's fish monger's or poulterer's trade without licence, etc.	Ten rupees.
[2][270-C	..	Using a public place or the sides of a public street as a public landing place, etc.	Twenty rupees.]
[2][270-E	..	Opening or keeping open a new private cart-stand without licence or contrary to licence.	Twenty rupees.]
[2][279	..	Using without licence a place for the disposal of the dead.	One hundred rupees.]
290	..	Failure to obey requisition to cleanse or disinfect buildings or articles.	[Ten rupees.][3]
[4][298	..	Failure to close place of public entertainment..	One hundred rupees.]
Rule 57 of Schedule IV.	..	Failure to obey requisition by auditors to attend, give evidence or produce document.	Twenty-five rupees.

[5]SCHEDULE IX.

LIST OF MUNICIPALITIES FOR WHICH COMMISSIONERS SHALL BE APPOINTED.

(*See* sections 3 (8-C) and 12-C).

(1) Coimbatore, (2) Kumbakonam, (3) Madurai, (4) Ootacamund, (5) Salem, (6) Tanjore, (7) Tiruchirapalli, (8) Tuticorin, (9) Gudiyattam, (10) Tirupattur, (11) Tiruvannamalai, (12) Vaniyambadi, (13) Vellore, (14) Walajapet, (15) Chidambaram, (16) Cuddalore. (17) Villupuram, (18) Chingleput, (19) Kancheepuram, (20) Dharapuram, (21) Erode, (22) Pollachi, (23) Tirupur, (24) Udamalpet, (25) Bodinayakanur, (26) Dindigul, (27) Kodaikanal, (28) Palni, (29) Periayakulam, (30) Coonoor, (31) Devakottai, (32) Karaikudi, (33) Sivakasi, (34) Srivilliputtur, (35) Virudhunagar, (36) Mannargudi, (37) Mayuram, (38) Nagapattinam, (39) Tiruvarur, (40) Palayamkottai (41) Tirunelveli, (42) Srirangam, (43) Karur, (44) Ambur, (45) Aruppukkottai, (46) Tiruvallur, (47) Melapalayam, (48) Mettupalayam, (49) Rasipuram, (50) Pudukkottai, (51) Tindivanam, (52) Gopichettipalayam, (53) Rajapalayam and (54) Arni.]

LEG. REF.

*These words were substituted for the word "chairman" by S. 17 (1) of the Madras District Municipalities (Amendment) Act, 1933 (Madras Act XV of 1933).

1. This item was inserted by S. 176 (v) of the Madras District Municipalities (Amendment) Act, 1930 (Madras Act X of 1930).

2. These items were inserted by S. 176 (vi) ibid.

3. These words were substituted for the word "Do" by S. 176 (vii) ibid.

4. This item was inserted by S. 176 (viii), ibid.

5. This schedule was substituted by the Madras Adaptation Laws Order, 1957, for Items (1) to (61) of Sch. IX substituted for original schedule substituted by Madras Adaptation of Laws Order, 1954.

APPENDIX I.

THE MADRAS DISTRICT MUNICIPALITIES (AMENDMENT) ACT (XXV OF 1958).

[1st October, 1959.

An Act further to amend the Madras District Municipalities Act, 1920.

Whereas it is expedient further to amend the Madras District Municipalities Act, 1920 (Madras Act V of 1920), for the purpose hereinafter appearing;

Be it enacted in the Ninth Year of the Republic of India as follows:—

Short title.

1. This Act may be called The Madras District Municipalities (Amendment) Act, 1958.

Extension of term of office of councillors of municipalities expiring on the 1st November, 1958.

2. (1) The State Government shall have power to direct that the term of office of the councillors of every municipality constituted under the Madras District Municipalities Act, 1920 (Madras Act V of 1920) (hereinafter referred to as the said Act) which extends up to noon on the first day of November, 1958, shall extend instead up to noon on such date as may be fixed by the State Government.

(2) The State Government may, from time to time, advance or postpone the date fixed under sub-section (1) and fix another date instead.

(3) No date fixed under sub-section (1) or sub-section (2) shall be later than the thirtieth day of April, 1959.

Date of elections and terms of office of councillors.

3. The provisions of the said Act shall have effect, subject to the following conditions, namely:—

(a) The State Government shall cause elections to be held to every municipality concerned, so that the newly elected members may come into office on the date fixed as aforesaid.

(b) The term of office of the newly elected councillors shall expire at noon on the first day of November immediately succeeding the expiry of three years from the date referred in clause (1).

Power to remove difficulties.

(4) If any difficulty arises in giving effect to the provisions of this Act, or of the said Act as amended by this Act, the State Government may, as occasion may require, by order, do anything which appears to them necessary for the purpose of removing the difficulty.

APPENDIX II.

THE MADRAS DISTRICT MUNICIPALITIES (AMENDMENT) ACT (XIX OF 1959).

[28th October, 1959.

An Act further to amend the Madras District Municipalities Act, 1920.

Whereas it is expedient further to amend the Madras District Municipalities Act, 1920 (Madras Act V of 1920), for the purposes hereinafter appearing;

Be it enacted in the Tenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Madras District Mnnicipalities (Amendment) Act, 1959.

(2) It shall come into force on such date as the State Government may, by notification, appoint.

2. (Incorporated in the main Act).

APPENDIX III.

ANDHRA AMENDING ACTS:

THE MADRAS DISTRICT MUNICIPALITIES (ANDHRA AMENDMENT) ACT (X OF 1955).

[22nd October, 1955.

An Act further to amend the Madras District Municipalities Act, 1920.

Whereas it is expedient further to amend the Madras District Municipalities Act, 1920 (Madras Act V of 1920), for the purpose hereinafter appearing;

Short title. 1. This Act may be called the Madras District Municipalities (Andhra Amendment) Act, 1955.

(Amendments noted in the main Act at the proper places).

APPENDIX IV.

THE MADRAS DISTRICT MUNICIPALITIES (ANDHRA SECOND AMENDMENT) ACT (XI OF 1955).

[22nd October, 1955.

An Act further to amend the Madras District Municipalities Act, 1920.

Whereas it is expedient further to amend the Madras District Municipalities Act, 1920 (Madras Act V of 1920), for the purposes hereinafter appearing;

Be it enacted in the Sixth Year of the Republic of India as follows:—

Short title. 1. This Act may be called the Madras District Municipalities (Andhra Second Amendment) Act, 1955.

(Amendments noted in the main Act at the proper places).

APPENDIX V.

THE MADRAS DISTRICT MUNICIPALITIES (ANDHRA AMENDMENT) ACT (IV OF 1956).

(Received the assent of the Governor on the 24th February 1956. Published in the Andhra Gazette Extraordinary part IV-B, page 9 dated 27th February 1956).

An Act further to amend the Madras District Municipalities Act, 1920.

Whereas it is expedient further to amend the Madras District Municipalities Act, 1920 (Madras Act V of 1920), for the purposes hereinafter appearing;

Be it enacted in the Seventh Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Madras District Municipalities (Andhra Amendment) Act, 1956.

2-13.—(Amendments noted in the main Act at the proper places).

Saving and validation of things done or action or proceedings taken, etc., prior to the commencement of this Act.

14. (1) Anything done, any action or proceeding taken, any charge levied in respect of water supplied, any contribution accepted by the council exclusively towards the capital cost of pipe supply of water or any preference shown to a building in the matter of supply of water in consideration of such acceptance before the commencement of this Act, which would have been valid if this Act had then been in force, shall be deemed to be valid for all purposes as if such thing was done, action or proceeding taken, charge levied, contributions accepted or preference shown, in the exercise of powers conferred by or under the principal Act as amended by this Act.

(2) Any notification or order issued or rule or by-law made in regard to the levy of charge for water supplied under the principal Act before the commencement of this Act shall be deemed to have been issued or made under the principal Act as amended by this Act and shall continue in force accordingly, until altered or cancelled under the principal Act as amended by this Act:

Provided that nothing contained in the principal Act as amended by this Act shall render any person liable to any punishment or penalty whatsoever by reason of any thing done or omitted to be done by him before the commencement of this Act in contravention of or contrary to, the provisions of the principal Act as amended by this Act if such act or omission was not in contravention of, or contrary to the provisions of the principal Act before the commencement of this Act.

APPENDIX VI.

THE HYDERABAD DISTRICT MUNICIPALITIES (ANDHRA PRADESH AMENDMENT) ACT (IV OF 1960).

[12th February, 1960.]

An Act further to amend the Hyderabad District Municipalities Act, 1956.

Be it enacted by the Legislature of the State of Andhra Pradesh in the Eleventh Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called The Hyderabad District Municipalities (Andhra Pradesh Amendment) Act, 1960.

(2) It shall come into force on the date of its publication in the Andhra Pradesh Gazette.

Substitution of new sections for sections 9, 10, 11, 12, 13, 14 and 15 of Hyderabad Act XVIII of 1956.

2. For sections 9, 10, 11, 12, 13, 14 and 15 of the Hyderabad District Municipalities Act, 1956 (Hyderabad Act XVIII of 1956) (hereinafter referred to as the principal Act) the following sections shall be substituted, namely:—

"9. **Division of Municipality into constituencies for purposes of election of members, etc.**—(1) For the purposes of election of members to a Committee, the Government, after consulting the Committee, shall by notification,

(a) divide the Municipality into constituencies;

(b) determine the constituencies in which the seats, reserved for the Scheduled Castes and Scheduled Tribes shall be set apart; and

(c) declare for whom such seats are reserved:

Provided that no such notification shall be issued unless notice of the proposed action inviting objections thereto within the prescribed time shall have been published in the prescribed manner and the objections, if any, received shall have been considered by the Government.

(2) Each of the constituencies shall ordinarily return only one member except the constituencies referred to in clause (b) of sub-section (1) which shall, in addition to the number, for such non-reserved seat, return one more member for the reserved seat. The number of members for each of the constituencies shall be notified by the Government.

(3) All the electors of a constituency shall be entitled to vote at an election any seat in that constituency, whether reserved or not.

(4) When issuing under sub-section (1) a notification which materially alters the existing division of a Municipality into constituencies, the Government may direct that the alteration shall take effect from the date of the next ordinary elections.

(5) When the number of members to be returned by a constituency is altered or when a new constituency is formed, or when an existing constituency is abolished, the prescribed authority shall, with the approval of the Government determine—

(a) the constituency which each member then on the Committee shall be deemed to represent; and

(b) the constituency or constituencies in which elections shall be held to fill up the vacancies, if any, in the Committee.

10. **Qualifications for inclusion in electoral roll for Municipality and publication thereof.**—(1) Every person whose name is included in such part of the electoral roll for any Assembly constituency, as relates to the Municipality or any portion thereof, shall be entitled to be included in the electoral roll for the Municipality prepared for the purpose of the Act, and no other person shall be entitled to be included in such roll.

Explanation (1).—Where in the case of any Assembly constituency there is no distinct part of the electoral roll relating to the Municipality, all persons whose names are entered in such roll under the registration area comprising the Municipality and whose addresses as entered in such roll are situated in the Municipality, shall be entitled to be included in the electoral roll for the Municipality.

Explanation (2).—No person's name shall be included in the electoral roll for the Municipality in more than one place.

(2) As soon as may be, after the electoral rolls for the Assembly constituencies which consist of, or comprise the Municipality or any portion thereof, have been published, revised or amended in pursuance of the Representation of the People Act, 1950 (Central Act XLIII of 1950), any person authorised in this behalf by the prescribed authority shall publish in such manner as the Government may direct, the portions of the said rolls which relate to the Municipality or of the alterations therein, as the electoral roll for the Municipality or as alterations to such roll, as the case may be.

(3) When a Municipality has been divided into constituencies, the electoral roll for the Municipality shall be divided into separate lists for each constituency.

(4) Where after the electoral roll for a Municipality or any alterations thereto have been published under sub-section (2), the Municipality is divided into constituencies for the first time or the division of the Municipality into constituencies is altered, or the limits of the Municipality are varied, the prescribed authority shall, as soon as may be after such division or alteration, or variation, as the case may be, in order to give effect to the division of the Municipality into constituencies or to the alteration of the constituencies, or to the variation of the limits, as the case may be, authorise a re-arrangement and republication of the electoral roll for the Municipality or any part of such roll, in such manner as the Government may direct.

(5) The electoral roll for the Municipality published under sub-section (2), as revised by any alterations thereto subsequently published under that sub-section or under sub-section (4), shall remain in force until the publication of a fresh electoral roll for the Municipality under sub-section (2).

(6) Every person whose name appears in the electoral roll for the Municipality shall, so long as it remains in force, subject to any revision thereof which might have taken place and subject also to the other provisions of this Act, be entitled, to vote at an election; and no person whose name does not appear in such roll shall vote at any election.

Explanation —In this section and section 11, the expression 'Assembly constituency' shall mean a constituency provided by law for the purpose of elections to the Andhra Pradesh Legislative Assembly.

11. **Power to correct electoral roll.**—Notwithstanding anything in section 10, the prescribed authority may, after making such inquiry as he thinks fit, publish in such manner as the Government may direct, amendments to the electoral roll for any Municipality for the purpose of bringing it into accord with the electoral roll for the relevant Assembly constituency."

Insertion of new sections era

3. After section 38 of the principal Act, the following sections shall be inserted, namely:—

"38-A. **Power of prescribed authority to defend himself if sued.**—The prescribed authority may defend himself if sued or joined as party in any proceedings relating to the preparation or publication of electoral rolls or to the conduct of elections, as the case may be, and the expenses incurred by such authority in so doing shall be payable from the Municipal fund.

38-B. **Injunctions not to be granted on election proceedings.**—Notwithstanding anything in the Code of Civil Procedure, 1908 (Central Act V of 1908), or in any other law for the time being in force, no Court shall grant any permanent or temporary injunction or make any interim order

restraining any proceedings, which is being or about to be taken under this Act for the preparation or publication of electoral rolls, or for the conduct of any election."

Omission of section 295, Hyderabad Act XVIII of 1956.

4. Section 295 of the principal Act shall be omitted.

Amendment of section 305, Hyderabad Act XVIII of 1956.

5. In sub-section (3) of section 305 of the principal Act, for the words "list of voters" the words "electoral roll for the Municipality" shall be substituted.

Amendment of section 309, Hyderabad Act XVIII of 1956.

6. In clause (i) of sub-section (2) of section 309 of the principal Act, for the words and figures "preparation and publication of list of voters under sections 12 and 13" the words and figures "preparation and publication of the electoral roll for the Municipality under section 10" shall be substituted.

APPENDIX VII.

Rules for the Conduct of Elections of Municipal Councillors.

(Corrected up to end of 1959).

1. In these rules—

(*a*) "the Act" means the Madras District Municipalities Act, 1920;

(*b*) 'Election Officer' means the person or officer authorized or appointed by the Election Authority to do any act or perform any function in connexion with the conduct of elections under these rules; and

(*c*) 'Government' means unless there is anything repugnant in the subject or context 'the Government of Madras'.

2. (1) Not less than 30 days before the date fixed for the holding of an election, the Election Officer shall prepare and publish a notice in English and in the chief language of the locality stating—

(*a*) the number of persons to be elected;

(*b*) the wards for which they are to be elected;

(*c*) the number of seats, if any, out of those for which elections are to be held, reserved in each ward for the members of the Scheduled Castes or Anglo-Indians or for Women;

(*d*) the dates on which, the place at which and the hours between which, nomination papers should be presented, an interval of at least seven days being allowed between the date of publication of the notice and earliest date for presentation of nomination papers;

(*e*) the date on which the nomination papers will be taken up for scrutiny, not being less than twenty days before the date of the election;

(*f*) the day on which, and the place or places where, the votes of the electors will be taken should there be a poll; and the hours during which the poll will be open, not being less than nine hours between 7 a.m. and 5 p.m.; and

(*g*) the day on which, and the place and hour at which, the Election Officer will commence the counting of the votes.

(2) The notice shall be published by affixing it at the municipal office and in two or more conspicuous places in each ward for which an election is to be held.

NOMINATION OF CANDIDATES.

3. (1) The nomination of every candidate shall be made by means of a nomination paper in form I, which shall, on application, be supplied free of cost by the Election Officer or the chairman to any elector whose name is on the electroal roll for the ward.

(2) Every nomination paper shall be signed by two such electors as proposer and seconder and the candidate shall sign a declaration on it expressing his willingness to stand for election.

(3) The same elector may sign as many nomination papers as there are vacancies to be filled but no more. Each candidate shall be nominated by a separate nomination paper. An elector who wishes to stand as a candidate for election to a seat shall not sign the nomination papers either as proposer or seconder. But in wards where more than one candidate has to be elected such an elector may propose or second other candidates, provided the total number of nomination papers

signed by him either as proposer or seconder does not exceed the number of members to be elected to that ward less one.

(4) Every nomination paper shall be presented by the candidate in person or by his proposer and seconder together on any of the dates, at the place and during hours appointed, to the Election Officer or to such other person as may be authorized by him in this behalf. The Election Officer or such other authorized person shall forthwith number the nomination papers serially in the order in which they are presented and enter on each nomination paper the time at which it is presented.

(5) Where a person has signed whether as proposer or seconder a larger number of nomination papers than there are vacancies to be filled, those of the papers so signed which have been first received up to the number of vacancies to be filled shall be deemed to be valid.

(6) The rejection of a nomination paper of any candidate on the ground of any irregularity in respect thereof shall not affect the validity of the nomination of the candidate if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(7) No nomination paper shall be received after the appointed time on the last of the dates appointed for the presentation of nomination papers.

4. On the presentation of a nomination paper, the Election Officer or other authorized person referred to in sub-rule (4) of rule 3 may require the person or persons presenting the same to produce a copy of the electoral roll on which the candidate and his proposer and seconder are registered or of the necessary entries therein and shall satisfy himself that the name and number of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral roll. Where necessary, he shall direct that the former be amended so as to be in accordance with the latter.

The Election Officer may interpret an entry in the electoral roll so as to overlook merely clerical or printing errors, but he shall record the interpretation adopted by him together with reasons therefor.

5. (1) At or before the time of the presentation of his nomination paper or papers, each candidate wishing to stand for election to a municipal council shall deposit or cause to be deposited with the Election Officer, in cash or in Government promissory notes of equal value at the market rate of the day, a sum of twenty-five rupees, if he is a member of the Scheduled castes or a sum of fifty rupees, if he is not a member of such castes and no candidate shall be deemed to be duly nominated for any ward in respect of which such deposit has not been made. A separate deposit shall be required in respect of each ward for which the candidate wishes to stand.

Explanation.—The delivery to the Election Officer of a receipt from any Government treasury or bank wherein the municipal council has an account, evidencing the payment by or on behalf of a candidate, to the credit of the municipal council, of the amount required to be deposited under this sub-rule shall be deemed to be a deposit of such amount within the meaning of this sub-rule made by or on behalf of such candidate at the time of such delivery.

(2) If no nomination paper is received within the time appointed in that behalf in respect of any person by whom or on whose behalf the deposit referred to in sub-rule (1) has been made, or if the nomination of any such person is rejected, or if he withdraws his candidature in the manner and within the time specified in sub-rule (1) of rule 9, the deposit shall be returned to the person by whom it was made ; and if any candidate dies before the commencement of the poll, any such deposit, if made by him, shall be returned to his legal representative or if not made by the candidate, shall be returned to the person by whom it was made.

(3) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made withdraws his candidature under sub-rule (2) of rule 9, or if he is not elected and the number of valid votes polled by him does not exceed one-eighth of the total number of valid votes polled, divided by the number of members, to be elected, the deposit shall be forfeited to the municipal council.

(4) For the purpose of sub-rule (3) the number of valid votes shall be deemed to be the number of ballot papers, other than spoilt ballot papers, counted.

(5) The deposit made in respect of a candidate who is not elected shall, if it is not forfeited under sub-rule (3), be returned to the candidate or to the person who has made the deposit on his behalf as the case may be, as soon as may be, after the publication of the result of the election in the *Fort St. George Gazette* ; and the deposit made in respect of a candidate who is elected shall be so returned as soon as may be after the candidate has taken his seat in the council or in pursuance of a direction by the Government for the return of the deposit despite the fact that the seat has not been so taken by the candidate.

(6) Notwithstanding anything contained in sub-rules (2) and (5), where deposits have been made by or on behalf of a candidate in respect of two or more wards, not more than one of the deposits shall be returned and the remainder shall be forfeited to the municipal council, irrespective of the fact whether nominations were received from the candidates for the wards or not.

(7) A deposit required to be returned to any person under sub-rule (2) or sub-rule (5) shall, if such person is dead, be returned to his legal representative.

(8) Notwithstanding anything contained in this rule, a deposit made under sub-rule (1) shall not be returned unless a claim therefor is delivered or sent by post to the Election Officer by the person

who made the deposit or by his legal representative, as the case may be, within six months of the date of the declaration by the Election Officer of the results of the election or where such declaration is made on two different dates, within six months of the later of such dates.

6. On the last of the days, appointed for the receipt of nomination papers and immediately after the hour for their receipt is past, the Election Officer or other authorized person referred to in sub-rule (4) of rule 3 shall publish in the municipal office a list in Form II of all nominations received with a notice that the nomination papers will be taken up by the Election Officer for scrutiny at the municipal office or other specified place on the date appointed under rule 2 at the hour specified.

SCRUTINY OF NOMINATION PAPERS.

7. (1) On the date appointed for the scrutiny of nomination, the candidates, one proposer and one seconder of each candidate, and one other person duly authorized in writing by each candidate, and except for the purpose of assisting the Election Officer no other person, may attend at such time and place as may be specified under rule 6 and the Election Officer shall give such persons all reasonable facilities to examine the nomination papers of all candidates which have been received as aforesaid.

(2) The Election Officer shall then examine the nomination papers and shall decide all objections which may be made at the time to any nomination and may either on such objection or on his own motion after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds :—

(i) that the candidate is ineligible for election under section 48 or 49 of the Act ;

(ii) that the proposer or seconder is a person whose name is not registered on the electoral roll ;

(iii) that there has been any failure on the part of the candidate or his proposer or seconder to comply with any of the provisions of rule 3 or 5 ; or

(iv) that, in case the election is solely for a seat or seats reserved for any community or communities or for women, the candidate does not belong to that community or any of those communities or is not a woman, as the case may be :

Provided that the nomination of a candidate shall not be rejected merely on the ground of an incorrect description of his name or of the name of his proposer or seconder, or of any other particulars relating to the candidate or his proposer or seconder as entered on the electoral roll, if the identity of the candidate, proposer or seconder, as the case may be, is established beyond reasonable doubt.

(3) The Election Officer shall endorse on each nomination paper his decision accepting or rejecting the same, and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection. The scrutiny shall be completed on the day appointed in this behalf under rule 2 and no adjournment of the proceedings shall be allowed.

7-A. (1) If the nomination of a candidate is rejected, the Election Officer shall, on a written application made by the candidate or his authorized agent, forthwith give him a copy of the order rejecting such nomination.

(2) Against any order rejecting the nomination of a candidate, an appeal shall lie to the District Collector. The memorandum of appeal shall be delivered to the District Collector or shall reach him within three days of the date of the order.

(3) After the expiry of the three days aforesaid the District Collector shall forthwith inform the Election Officer as to whether an appeal has or has not been preferred to him under sub-rule (2). If any such appeal or appeals have been preferred, the District Collector shall communicate the orders passed by him on such appeal or appeals to the Election Officer within four days of such expiry, that is to say, within seven days from the date fixed for the security of nominations.

8. (1) On the expiry of three days from the scrutiny of nominations or if any appeal or appeals have been preferred under sub-rule (2) of rule 7-A, on the expiry of seven days from such scrutiny the Election Officer shall prepare a list in Form III of persons whose nominations have not been rejected and who have not withdrawn their candidature and publish it on the notice board of the municipal office at least four days before the date fixed for election.

(2) The list shall contain the names of the candidates in alphabetical order and shall describe them as in their nomination papers and, if a poll is found to be necessary, shall also specify the distinctive symbols assigned to them under sub-rule (3).

(3) If a poll is found to be necessary, the Election Officer shall assign to each candidate, subject to such directions as may be issued by the Government in that behalf, a distinctive symbol.

(4) In every case where a symbol has been assigned to a candidate under sub-rule (3), such candidate or his election agent shall forthwith be informed of the symbol so assigned and be supplied with a specimen thereof by the Election Officer.

Note.—The election agent, if any, shall be appointed in writing by the candidate and the said agent's consent recorded on the candidate's letter to the Election Officer intimating the appointment.

9. (1) Any candidate may withdraw his candidature by notice in writing signed by him and delivered to the Election Officer at any time after the presentation of his nomination paper or papers and not later than 3 o'clock in the afternoon of the next day but one succeeding that appointed for the scrutiny of nominations. Unless the notice is delivered by the candidate himself to the Election

Officer, the candidate's signature on the notice shall be attested by a person empowered to attest vakalats.

(2) In cases where a poll is found to be necessary a candidate may also withdraw his candidature by notice in writing signed by the candidate and delivered by him personally to the Election Officer, after the latest hour for withdrawal referred to in sub-rule (1) but not later than 5 o'clock in the afternoon of the eighth day from the last day of withdrawal specified in sub-rule (1).

Explanation.—Withdrawal under this sub-rule will entail forfeiture of the deposit made by or on behalf of the candidate.

(3) The Election Officer on receiving a notice of withdrawal under sub-rule (1) or sub-rule (2 shall, as soon as may be, cause a notice of the withdrawal to be published on the notice board of the municipal office ; and where the withdrawal is under sub-rule (2), shall forthwith give intimation of such withdrawal, to all other candidates who have not withdrawn their candidatures.

(4) A candidate who has withdrawn his candidature under sub-rule (1) or sub-rule (2), shall not be allowed to cancel the withdrawal or to be renominated as a candidate for the same election.

10. (1 After the list of valid nominations is published under rule 8 the Election Officer shall adopt the procedure specified below and determine the seats in respect of which a poll is necessary and the candidates from among whom the said seats have to be filled by the electors.

(2 (*a*) the Election Officer shall consider the position separately in respect of each of three classes o eserved seats, namely, the seats reserved for members of the Scheduled Castes, the seats reserved for Anglo-Indians and the seats reserved for women, as have to be filled at the election, and in that order.

(*b*) (i) If in respect of any class of reserved seats, the number of candidates qualified for election is not larger than the number of vacancies, the Election Officer shall declare the candidates or all such candidates as the case may be, to be duly elected.

(ii) If the number of candidates qualified for election to reserved seats of any class exceeds the number of vacancies in that class, but the total number of candidates standing for election in the ward is equal to the total number of vacancies to be filled at the election, the Election Officer shall, after notice to candidates decide, by drawing lots, which of the candidates so qualified shall be declared elected :

Provided that, where the candidates qualified for election to the reserved seats have agreed among themselves as to which of them should be declared elected to the reserved seat or reserved seats and present a report of such agreement signed by all of them to the Election Officer, before the expiry of the time allowed for withdrawal of candidates under sub-rule (1) of rule 9, the Election Officer shall make a declaration accordingly.

(3) If all the vacancies in the reserved seats to be filled at the election have been filled under sub-rule(2) and if the number of candidates remaining after the exclusion of the candidates so declared elected under the said sub-rule is not larger than the number of non-reserved seats to be filled at the election, the Election Officer shall declare them to be duly elected to the non-reserved seats.

(4) In respect of vacancies not filled under sub-rules (2) and (3), a poll shall be held for election from among the candidates remaining after excluding those declared elected under the said sub-rules.

(5) If there are any seats remaining to be filled after following the procedure prescribed in sub-rules (2), (3) and (4), the Election Officer shall start proceedings afresh for filling them, in all respects as it for a fresh election.

10-A. If, after the scrutiny of nominations has been completed and before the poll is taken, a candidate whose name appears in the list of valid nominations published under rule 8 withdraws his nomination under sub-rule (2) of rule 9 becomes ineligible for election under clause (*e*) of sub-section (2) of section 49 of the Act, the Election Officer shall, upon receipt of such withdrawal or upon being satisfied as to the existence of such ineligibility, as the case may be, reject the nomination of the candidate and the provisions of rule 10 shall then be applied afresh (if necessary) in respect of the remaining candidate or candidates :

Provided that nothing contained in this rule shall apply if the candidate has already been declared duly elected under rule 10.

11. If after the taking of a poll has become necessary and before the poll is taken, a candidate who has been duly nominated dies the Election Officer shall, upon being satisfied of the fact of the death of the candidate, countermand the poll ; and election proceedings shall be started afresh in all respects as if for a new election :

Provided that no fresh nomination shall be necessary in the case of a candidate who stood nominated at the time of the countermanding of the poll.

VOTING.

12. A polling station shall have one or more polling booths. (1) If a poll has to be taken: the Election Officer shall appoint forthwith one or more polling Officers for each polling station and may pay them reasonable remuneration for their services. The Election Officer shall provide for each polling officer such number of clerks as may be necessary, and may also, if necessary, appoint

one or more identifying officers to assist the polling officer in identifying the electors. Polling Officers shall neither be councillors for the wards for which the poll is to be taken nor registered electors therein, nor any person who is an officer or other employee of the municipality.

(2) The polling officer shall keep order at the polling station, shall see that the election is fairly conducted, shall regulate the number of electors to be admitted at one time, and shall exclude all other persons except.—

(*a*) the candidates, and at each booth one agent of each candidate at a time (hereinafter referred to as the polling agent) appointed in writing by the candidate,

(*b*) the police or other public servants on duty, and

(*c*) his own clerks and such persons as the polling officer may from time to time admit for the purpose of identifying electors.

(3) Where there are more than one polling both in a polling station the Election Officer may appoint a Presiding Officer who may exercise the powers of a polling officer in any polling both in his station and control and supervise all the polling officers and other staff in the station.

(4) Where a woman elctor cannot be identified by the identification officers apppointed under sub-rule (1) by reason of her observing 'purdah', she may be required to be identified by any of her near relatives unless she otherwise satisfies the polling officer of her identity.

If any question arises as to whether a person is or is not a near relative within the meaning of this sub-rule, it shall be decided by the polling officer and his decision shall be final.

12-A. Each polling station and at a polling station having more than one polling booth, each such booth shall contain a separate compartment in which electors can record their votes screened from observation. As far as possible separate compartments and separate entrances and exists shall, where action is not taken under rule 12-B, be provided for women electors.

12-B. Notwithstanding anything hereinbefore contained the Election Officer may, at his discretion, if sufficient number of women suitable and willing to act as polling officers are available, provide a separate polling station for taking the votes of the women electors for any polling area or make such other arrangements as may be necessary to ensure the privacy of such electors. In such cases only women shall be appointed to act as polling officers in respect of the votes of the women electors concerned. Except the police or other public servants on duty no candidate or other person who is not a woman shall be admitted into or be present at such polling station or the place where the votes of such women electors are taken, as the case may be.

12-C. No person shall on the date or dates on which a poll is taken at any polling station, commit any of the following acts, within the polling station or in any public or private place within a distance of one hundred yards of the polling station, namely :—

(*a*) canvassing for votes ; or

(*b*) soliciting the vote of any elector ; or

(*c*) persuading any voter not to vote for any particular candidate ; or

(*d*) persuading any elector not to vote at the election ; or

(*e*) exhibiting any notice or sign (other than an official notice) relating to the election.

(2) Any person who contravenes the provisions of sub-rule (1) shall be punishable with fine which may extend to one hundred rupees.

13. (1) The Election Officer shall provide in each polling compartment at each polling station, as many ballot boxes as there are candidates, the box of each candidate bearing both inside and outside the serial number and the distinctive symbol assigned to him. He shall also provide a sufficient number of envelopes bearing the distinctive symbol assigned to each candidate in order to give effect to clause (iii) of sub rule (2) of rule 24-A, together with the necessary outer covers, copies of the electoral roll or such part thereof as contains the names of the electors entitled to vote at the station, and such other papers, stationery and forms as may be necessary. He shall place at the entrance to the polling compartment a board on which is displayed in bold and clear print the name of each candidate, the serial numbers and the symbol assigned to him and the number of vacancies for which the election is hold.

(2) Every ballot box shall be so constructed that ballot papers can be introduced therein but cannot be withdrawn therefrom, without the box being inlocked.

(3) The symbol assigned to each candidate under sub-rule (1) shall be printed in labels which shall be pasted both inside and outside a ballot-box and such ballot box shall then be deemed to have been allotted to that candidate.

13-A. (1) The polling officer at any polling station, immediately before the commencement of the poll, shall show each of the ballot boxes empty to such persons as may be present at such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal. He shall thereupon place the box so locked and sealed inside the polling compartment for the receipt of ballot papers, but screned from observation.

The ballot boxes shall be arranged from left to right in the place set apart for the purpose and in the order in which the names are published in Form III.

(2) Before the polling station is opened for the recording of votes, the polling officer shall read to such persons as may be present the provisions of section 14 of the Indian Election Offences and Inquiries Act, 1920, and shall explain the substance thereof in the chief language of the district.

14. (1) Every elector who applies for a ballot paper or ballot papers for the purpose of voting at a polling station, shall, before receiving such paper or papers, allow—

(*a*) the inspection of his left palm and forefinger by the polling officer ; and

(*b*) an indelible ink mark to be put in the palm at the base of his left forefinger.

(2) If any such elector—

(*a*) refuses to allow such inspection of his palm and left forefinger ; or

(*b*) refuses to allow an indelible ink mark to be put in the palm at the base of his left forefinger ; or

(*c*) persists in doing any act with a view to remove any such mark after it has been put— he shall not be entitled to be supplied with any ballot paper or to record his vote at the election.

(3) No person who has already such a mark in the palm at the base of his left forefinger at the time he enters the polling station shall be supplied with any ballot paper.

(4) Any reference in this rule to the left forefinger of an elector shall, in the case where the elector has his left forefinger missing, be construed as a reference to any other finger of his left hand and shall in the case where all the fingers of his left hand are missing be construed as a reference to the forefinger or any other finger of his right hand and shall in the case where all his fingers of both the hands are mising, be construed as a reference to such extremity of his right or left arm as he possesses.

15. Ballot papers shall be in Form IV and shall have counterfoils attached to them which shall be in Form IV-A. They shall be serially numbered both on the foil and on the counterfoil. Where more than one ballot paper are attached to the same counterfoil, the mark shall be stamped on all the ballot papers as well as the counter-foils. On every ballot paper, such mark as may be directed by the Election Officer shall be stamped across the perforation between the ballot paper and the counterfoil in such a manner that the mark falls partly on the ballot paper and partly on the counterfoil. Where the poll is taken for two or more seats every one of the serial numbers shall be printed on as many ballot papers as there are seats ; the first of such ballot papers shall bear the number alone and the remaining ballot paper shall bear the number with the capital letters of the English alphabet added after it in order.

Illustration.—If there are three seats for which a poll is taken the serial numbering shall be 1, 1-A and 1-B ; 2, 2-A and 2-B ; 3, 3-A and 3-B and so on.

[1]16. (1) At elections for wards in which not more than one seat has to be filled, an elector shall be given only one ballot paper which shall be placed in the ballot-box bearing the serial number and the symbol assigned to the candidate for whom he desires to vote.

(2) At elections for wards in which more than one seat has to be filled, the elctor shall be given as many ballot papers as there are seats to be filled and the polling officer shall explain to the elector—

(i) the number of candidates for whom he may vote;

(ii) that he may place one ballot paper in the ballot-box of each of the candidates for whom he wishes to vote ;

(iii) that he shall not place two or more ballot papers in the same ballot-box, and

(iv) that where he wishes to vote for a smaller number of candidates than he has votes, he shall return the surplus ballot paper or ballot papers to the polling officer.

(3) The surplus ballot paper or ballot papers referred to in clause (iv) of sub-rule (2) together with the corresponding counter foil or counterfoils shall be marked as cancelled.

(4) Immediately before any ballot paper or papers are delivered to an elector, the number, name and description of the elector as stated in the electoral roll shall be called out. The polling officer shall thereafter cause the palm at the base of the left forefinger of the elector to be marked with indelible ink. The polling officer shall enter on the counterfoil or on the first of the counterfoils, as the case may be, the name and number of the elector on the electoral roll. He shall then detach the ballot paper or papers from the counterfoil and deliver it to the elector and shall place a mark on a copy of the electoral roll against the number of the elector to denote that he has received the ballot paper or papers, but with no indication of the particular ballot paper or papers which he has received. The elector on receiving the ballot paper or papers shall forthwith proceed into the polling compartment and there place the ballot paper or papers in the ballot-box or boxes according to his choice. Every elector shall vote without undue delay and shall quit the polling station as soon as he has voted. He shall not place anything except a ballot paper in any box. Anything other than ballot papers found in any box shall be forfeited to the municipal council concerned.

18. If owing to blindness or other infirmity an elector is unable to read the symbol on a ballot box or is physically incapable of putting the ballotpaper into a ballot-box, the polling officer shall

LEG. REF.

1. Rule 16 as amended by G.O. No. 1418, L.A. of 19th July 1948, published in Rules Supplement to Part I-A, page 98, *Fort St George Gazette*, dated 27-7-1948.

enter the polling compartment with such elector, ascertain from the elector the candidate or candidates in whose favour he desires to vote and shall put the ballot paper or papers in the ballot-box or boxes of such candidate or candidates in accordance with the wishes of such elector. The polling officer shall have these done with as much secrecy as is feasible and shall make a note of each such instance in a sheet of paper without indicating the manner in which the votes have been cast and send it to the Election Officer in a sealed cover along with the packets mentioned in rule 25 (3),

19. Special facilities in accordance with the instructions, if any, issued by the election authority in that behalf may be accorded to women electors.

20. (*Omitted.*)

21. When a person presents himself to vote and at any time before a ballot paper is supplied to him the polling officer may of his own accord and shall, if so required by a candidate or polling agent, put to such person either or both of the following questions :—

(i) Are you the person enrolled as follows (reading the whole entry from roll).

(ii) Have you already voted at the present election in this polling station or in any other polling station, and the person shall not be supplied with a ballot paper unless he gives an unqualified answer to the question or questions, put to him and unless his answer to the first question is in the affirmative and the second in the negative. Except as mentioned herein, and subject to the provisions of section of the Act, every person whose name is found on the electrol roll shall be entitled to be supplied with a ballot paper.

22. If a person representing himself to be a particular elector named on the electoral roll applies for a ballot paper after another person has voted as such elector, the applicant shall, after duly answering such questions as the polling officer may ask, be entitled to receive a ballot paper or ballot papers in the same manner as any other elector.

The polling officer shall write the word 'Tendered' in bold characters on the face of the ballot paper or each of the ballot papers before it is handed over to such person. On receipt of such ballot paper or papers (hereinafter referred to as tendered ballot papers) the elector shall proceed into the polling compartment and there place the ballot paper or each of the ballot papers in an envelope bearing the symbol assigned to the candidate or each of the candidates for whom the applicant wishes to vote. He shall then stick the envelope or envelopes and enclose the same in a cover and hand it over to the polling officer. The polling officer shall make an endorsement containing the name of the elector and his number on the electoral roll and the number of the ward for which the election is held, and shall set aside the cover in a separate packet the ballot papers in which shall not be counted by the Election Officer. The name of the elector and his number in the electoral roll and the name or distinctive number of the polling station to which the roll relates shall be entered in a list in Form V which shall bear the heading 'Tendered votes list.' The person tendering such ballot paper or the papers shall sign his name and address on that list or affix his thumb-impression thereto.

Explanation.—In cases falling under this rule to which rule 23 is also applicable, the provisions of this rule as well as of rule 23 shall be followed.

23. (1) If any candidate or polling agent declares and undertakes to prove that any person by applying for a ballot paper has committed the offence of personation, the polling officer shall call upon the candidate or agent bringing forward the charge of personation to deposit with him a sum of fiverupees in cash. A separate deposit shall be required for proceeding with each charge of personation. If such deposit is not made the polling officer shall ignore the challenge.

(2) Immediately the deposit required by sub-rule (1) has been made, the polling officer shall obtain a written statement in Form VI which shall be signed by the candidate or agent, as the case may be, and attested by two credible witnesses, in the presence of the polling officer.

(3) The polling officer shall require the applicant for the ballot paper to enter in the list of challenged votes (which shall be in Form VI-A) his name and address or, if he is unable to write, to affix his thumb-impression thereto and may further require such person to produce of identification.

(4) If the applicant for the ballot paper on being questioned in the manner provided in rule 21 given unqualified answers to the first question in the affirmative and to the second in the negative he shall be allowed to vote after he has been informed of the penalty for personation. The polling officer shall make a note of the circumstances and of his decision on the list of challenged votes.

(5) The polling officer shall, at the close of the poll, forward to the Election Officer the statement mentioned in sub-rule (2) enclosed in the packet containing the list of challenged votes.

(6) The Election Officer shall immediately make such investigation as may be necessary and shall take steps to prosecute the person or persons whom he believes to be guilty of the offence of personation. He shall, however, stay the investigation if notice of an election petition filed before the Election commissioner and relating to the case under investigation is received and shall resume the investigation after disposal of the said petition. If it is found as a result of the judicial trial connected with the prosecution that the offence of personation has not been proved, the Election Officer shall decide whether the whole of any part of the deposit shall be declared forfeit to the municipal, council. In coming to a decision on this point the Election Officer shall be guided by the facts and conclusions recorded at the trial. If there is no such judicial trial, the Election Officer shall, in his discretion, decide whether having regard to the relevant circumstances, the whole or any part of the deposit shall be declared forfeit to the municipal council. The deposit or such portion thereof as has ot been declared forfeit shall be returned to the person who made the deposit.

24. An elector who has advertently dealt with his ballot paper in such a manner that it cannot be conveniently used as a ballot paper may, on delivering it to the polling officer and satisfying him of the inadvertance, obtain another ballot paper in place of the spoilt one, the latter one together with its counterfoil being marked as cancelled. Where such elctor has originally received more than one ballot paper, he shall not be given fresh ballot paper unless he delivers to the polling officer all the ballot papers he had originally received which shall, together with their counterfoils, be marked as 'cancelled'.

24-A. (i) A polling officer, public servant or polling agent who being entitled to vote in the ward is duly appointed or authorised for duty at a polling station at which he is not ordinarily entitled to record his vote may apply to the Election Officer concerned for a certificate entitling him to record his vote at the polling station where he is employed. The said certificate shall be in Form VI-B.

If a polling officer, public servant or polling agent is on duty at a polling station not relating to the ward in which he is entitled to record his vote the Election Officer shall in addition to the certificate mentioned above furnish the polling officer concerned with particulars regarding the number of votes which an elector is entitled to give and the names of and serial numbers and symbols assigned to, the candidates, standing for election in that ward, together with a ballot paper or ballot papers relating to such ward and envelops bearing each of the symbols assigned to such candidates.

The Election Officer shall in either case, immediately send a copy of the certificate to the polling officer of the polling station at which the person to whom the certificate is issued is ordinarily entitled to record his vote.

(2) A person in possession of a certificate in the form prescribed in sub-rule (1) shall deliver the certificate to the polling officer who shall thereupon issue to the person, ballot papers in the same manner as to any other elector. Such ballot papers shall be dealt with in the following manner :

(i) If the polling station at which the person is on duty relates to the ward in which he is entitled to vote, then the provisions contained in rules 16 and 17 shall apply. The polling officer shall at the end of the poll send the certificate to the Election Officer along with statement mentioned in rule 26.

(ii) If the polling station at which the person is on duty be not in the ward in which he is entitled to vote, the polling officer shall issue the ballot paper or papers with instructions similar to those contained in sub-rule (2) of rule 16. The person shall proceed into the polling compartment and place the ballot paper or each of the ballot papers in an envelope bearing the symbol assigned to the candidate or each of the candidates for whom he wishes to vote. He shall then stick the envelope or envelopes and enclose the same in a cover and hand over the cover to the polling officer. The polling officer shall make up into separate packets for each ward the covers in which votes have been so recorded, the connected certificates being fastened to the covers, seal up each such packet in the manner specified in rule 25 and forward the same to the Election Officer.

24-B. (1) Where the proceedings at any polling station are seriously interrupted or obstructed by any riot or open violence or otherwise or where a large number of electors are unable to attend the poll at the polling station by reason of any act of God such as flood or fire, the polling officer shall stop the poll, pending the receipt of the orders of the Election Authority. The fact that the poll has been so stopped shall be immediately announced by the polling officer to the persons present at the polling station.

(2) Where a polling officer stops a poll under sub-rule (1), he shall observe the procedure laid down in rules 25 and 26 and forthwith make a full report of the circumstances to the Election Officer, who shall forward the same expeditiously with his remarks thereon, if any, to the Election Authority.

(3) The Election Authority shall thereupon order—

(*a*) that the poll be continued at the polling station for the number of hours for which it was not held on the previous occasion, or

(*b*) that the proceedings at the poll held at the polling station on the previous occasion be ignored and that a fresh poll be held at such polling station for the full number of hours for which it should have been on the previous occasion.

Any order passed by the Election Authority under this sub-rule shall be final.

(4) Any order passed under sub-rule (3) shall—

(*a*) State—

(i) the date on which and the hours between which, the continuation poll or the fresh poll, as the case may be, shall be held ; and

(ii) the date on which, and the place and hour at which, the Election Officer will commence the counting of the votes under rule 27 ; and

(*b*) be published in the manner laid down in sub-rule (2) of rule 2 not less than seven day before the date fixed for the continuation poll or for the fresh poll as the case may be.

(5) (*a*) Where an order is passed under clause (*a*) of sub-rule (3) for the continuation of the poll, the Election Officer shall proceed afresh under sub-rule (1) of rule 12 and return to the polling officer appointed under that sub-rule, all the packets received by him under sub-rule (2) of this rule.

(*b*) The polling officer shall open the packets just before the commencement of the continuation poll in the presence of such persons as may be present at the polling station, and commence such poll precisely at the hour fixed therefor in the order passed by the Election Authority under clause (*a*) of sub-rule (3).

(c) At the continuation poll, the polling officer shall allow only such electors to vote as did not vote on the previous occasion.

(6) Where an order is passed under clause (b) of sub-rule (3) for holding a fresh poll, Election Officer shall proceed afresh under sub-rule (1) of rule 12, and a fresh poll shall be held at the polling station concerned in accordance with the provisions of these rules in all respects as if it were being held at such polling station for the first time.

Explanation.—There shall be no fresh nominations in cases falling under this sub-rule.

(7) Notwithstanding anything contained in this rule, if a candidate dies at any time before orders are passed by the Election Authority under sub-rule (3) or at any time after the passing of such orders but before the commencement of the continuation poll or of the fresh poll, as the case may be, the Election Officer shall, upon being satisfied of the fact or the death of the candidate, intimate such fact to the Election Authority, stop all further proceedings in connexion with the election, and start election proceedings afresh in all respects as if for a new election by the ward concerned.

Provided that no fresh nomination shall be necessary in the case of the remaining candidates who stood nominated at the time when the poll was stopped.

25. (1) The polling officer shall close the polling station at the hour appointed for closing under rule (2) or sub-rule (4) of rule 24-B, as the case may be, so as to prevent the admission thereto of any elector after that hour.

Provided that all the electors present within the polling station, i.e., the building in which the poll is held and not in its environs before the poll is held shall be entitled to have their votes recorded

(2) If any question arises as to whether any elector shall, for the purpose of the proviso to sub-rule (1), be deemed to be present within the polling station, before it is closed, the question shall be referred to the polling officer whose decision shall be final.

(3) The polling officer of each polling station, as soon as practicable after the close of the poll, shall, in the presence of any candidate or polling agents who may be present, make up into separate packets and seal with his own seal and the seales of such candidates or agents as may decide to affix their seals—

(i) each ballot box in use at such station unopened but with the key (which should also be sealed in the same manner as the ballot box), attached,

(ii) the tendered ballot papers,

(iii) the unused ballot papers,

(iv) the spoilt ballot papers,

(v) the marked copy of the electoral roll,

(vi) the counterfoils of the ballot papers,

(vii) the tendered votes list,

(viii) the list of challenged votes with the statement or statements mentioned in sub-rule (2) and (5) of rule 23, and

(ix) the covers referred to in clause (ii) of sub-rule (2) of rule 24-A and shall forward such packets to the Election Officer.

(4) Each packet shall be numbered and shall bear a note as to its contents, the name of the polling station and the number of the ward. Where no vote has been recorded at any polling station the polling officer shall submit a *nil* report together with the statement in Form VII referred to in rule 26.

5. The Election Officer shall make adequate arrangements for the safe transport of all ballot boxes, packets and other papers referred to in this rule, and for their safe custody, until the commencement of the counting of votes.

26. The packets shall be accompanied by a statement, in a separate cover, in Form VII made by the polling Officer, showing the number of the ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot boxes unused, spoilt and tendered ballot papers.

26. (1) The counting of votes shall commence on the day and at the place and hour appointed in that behalf. Votes shall be counted by, or under the supervision of, the Election Officer, and each candidate, the election agent of each candidates, and one representative of each candidate authorized in writing by the candidate shall have a right to be present at the time of counting. No other person shall be allowed to be present except such persons as the Election Officer may appoint to assist him in counting votes and no person shall be appointed to assist in counting the votes, who has been employed by or on behalf of any candidate for any purpose whatsoever connected with the election.

(2) The Election Officer shall, before he commences to count the votes, read the provision of section 14 of the Indian Election Offences and Inquiries Act, 1920, to such persons as may be present, and shall then proceed as follows :—

(a) The ballot box or boxes relating to all polling stations in the ward bearing the same serial number and symbol and all envelopes bearing the same symbol as those boxes, enclosed in covers which may have been received under rule 24-A shall be opened one after another. The Election Officer shall take out the ballot papers therefrom, count them and record the total number of votes secured by the candidate concerned in a statement. He shall then proceed similarly with the boxes and envelopes bearing each symbol which may have been prescribed in the ward.

(*b*) The Election Officer shall allow the candidates and their agents reasonable opportunities to inspect, without handling, all ballot papers which in his opinion are liable to be rejected. He shall endorse on every ballot paper which is rejected the word "rejected". If any candidate or agent present questions the correctness of the rejection, he shall also record on the ballot paper the grounds for the rejection.

(*c*) The Election Officer shall, as far as practicable proceed continuously with the counting of the votes; and shall, during any necessary intervals during which the counting has to suspended, place the ballot papers, packets and other documents relating to the election under his own seal and the seals or such candidates or agents as may desire to affix them and shall cause adequate precautions to be taken for their custody.

27-A. (1) A ballot paper shall be rejected if it—

(*a*) bears any mark by which the elector can be identified, or

(*b*) does not bear the official stamp prescribed in rule 15 or

(*c*) is a ballot paper of a voter allotted to a booth other that to which the box relates; or

(*d*) bears the mark belonging to a ward different from that of the ballot box in which it is found:

(*e*) bears any mark against more candidates than there are members to be elected;

(*f*) if more than one mark is placed in the compartment enclosing the symbol of a candidate, they shall count only as one vote in his favour;

(*g*) if any one of the marks is so placed as to render it doubtful for which candidate such mark is intended to apply the vote cancerned but not the whole ballot paper in case where more than one vote can be given in the same ballot paper, shall be invalid, provided that the elector has not placed marks against more candidates than there are members to be elected.

Provided that a ballot paper dealt with under clause (ii) of sub-rule (2) of rule 24-A shall not be rejected merely on the ground that it bears the mark of a ward different from the one in which the elector is entitled to vote;

Provided further that a ballot paper shall not be rejected under clause (*b*) if the Election Officer is satisfied beyond reasonable doubt that the ballot paper was one issued by the polling officer.

(2) If two or more ballot papers bearing the same serial number be found in a ballot box, they shall count only as one vote in favour of the candidate to whom that box as assigned.

(3) Except on the grounds mentioned in sub-rules (1) and (2) a ballot paper shall not be rejected.

(4) The decision of the Election Officer as to the validity of a ballot paper shall be final, subject only to reversal on an election petition.

28. (1) After the Election Officer has completed the scrutiny and counting of votes he shall prepare a return of the results of the polling in Form IX, and shall, subject to the provisions of rule 33, declare that the candidate or candidates to whom most valid votes have been given, has or have been duly elected:

Provided that if one or more seats are reserved for members of the Scheduled Castes or Anglo-Indians or women, the Election Officer shall first declare the candidate or candiates who are members of the Scheduled Castes or Anglo-Indians or who are women, as the case may be, to whom the largest number of votes have been given to be elected to such reserved seat or seats:

Provided further that if seats are reserved for members of the Scheduled Castes, Anglo-Indians and women the Election Officer shall first declare the candidate or candidates who are members of the Scheduled Castes or Anglo-Indians as the case may be, to whom the largest number of votes have been given to be elected to the seat or seats reserved for members of the Scheduled Castes or Anglo-Indians and then declare the candidate or candidates who are women to whom the largest number of votes have been given, to be elected to the seat or seats reserved for women.

(2) Any candidates or his agent shall, on application, be permitted to take a copy or an extract from the return in Form IX.

29. (*Omitted.*)

30. (1) The Election Officer shall not open the sealed packets containing tendered balllot papers, the marked copy of the electoral roll or the counterfoils of the ballot papers. He shall verify the statement submitted by the polling officer under rule 26 by comparing it with the number accepted ballot papers and of rejected ballot papers and the unused ballot papers in his possession.

(2) The Election Officer shall then make up into separate bundles in respect of each candidate—

(i) Such of the ballot papers as have been accepted as valid; and

(ii) the remaining ballot papers which have been rejected as invalid. He shall then make up both the bundles into one packet and seal the packet with his own seal. He shall also reclose and reseal each of the other packets which were opened by him and record on each such packet a description of its contents.

Disposal of ballot papers.

31. (1) The Election Officer shall, after declaring the results, forward a copy of the return to the chairman of the municipal council and shall retain in his custody the packets of ballot papers, whether

counted, rejected or tendered, and of the ounterfoils thereof. These packets shall not be opened and their contents shall not be inspected or produced except under he orders of an election or other competent court.

(2) The Election Officer shall retain the packets and the marked copies of the electoral roll for a year and shall then, inless otherwise directed by the orders of an election or other competent court, cause them to be destroyed.

General.

32. (1) If any person has been elected for more wards than one, he shall by notice in writing signed by him intimate to the Election Officer the ward for which he chooses to serve. Such intimation shall reach the Election Officer within twenty-four hours of the latest of the declarations of the results of elections in the wards for which such person stood as a candidate.

(2) On receipt of the intimation, the Election Officer shall declare the said person to have been elected for the ward chosen by him. In default of such intimation the Election Officer shall declare him to have been elected for any one of the wards. In either case, election proceedngs shall be started afresh for filling up the vacancy in the other ward or wards for which such person has been elected.

33. If there is an equality of votes between any two or more candidates, the Election Officer shall, after notice to the candidates concerned, decide by drawing lots which candidate or candidates he shall declare to have been elected.

34. The name or names of the candidates or candidates duly elected shall be forwarded without delay by the Election Officer to the Superintendent, Government Press, for publication in the *Fort St. George Gazette*, and shall also be published on the notice Board of the municipal office.

35. (1) If any question arises as to the interpretation of these rules otherwise than in connexion with an inquiry held under the rules for the decision of disputes as to the validity of an election the question shall be referred to the Government, whose decision shall be final.

(2) Pending the decision of the Government on any such reference made to them or the issue of final orders on any inquiry which the Government may institute upon receipt of information that an election is being or about to be held in contravention of the rules, it shall be lawful for the Government to direct the stay of the election proceedings at any stage thereof prior to the declaration of the results. Any election held or continued in contravention of the orders of the Government under this rule shall be void and of no effect whatsoever.

(3) unless it is otherwise ordered by the Government, election proceedings stayed under this rule shall, on cancellation of the stay order, proceed from the stage at which they wdre stayed on fresh dates to be fixed.

(4) If any difficulty arises as to the holding of any election under these rules, the Government may, by order, do anything not in consistent with these rules which appears to them necessary for the proper holding of the election. Every order passed under this sub-rule shall be laid before each of the Chambers of a Provincial Legislature at its next meeting.

36. The election of a councillor by a municipal council under sub-section (2) of section 9 of the Act shall be in the manner provided in the rules for the election of the vice-chairman.

37. Notwithstanding anything contained in the foregoing rules, the Government or the Election Authority, may, for special reasons, empower the Election Officer to fix dates and periods other than those specified or fixed by or under these rules, for all or any of the stages of the election proceedings connected therewith.

38. (1) The Government may, by notification, order that in the case of any municipal Council the voting shall be by the method of marking on the balllot-paper.

(2) Notwithstanding anything contained in rules 8, 12-A, 13, 13-A, 15, 16, 17, 18, 22, 24-A, 25 (1), 27, 27-A, the following procedure shall be followed in regard to the recording of votes by electors of municipal councils notified under sub-rule (1)—

(*i*) The symbols assigned to the candidates shall be printed, one below the other in the order in which the names are published in Form III, on the ballot paper which shall be in Form X and shall have a counterfoil in Form X-A which shall be attached to the top of Form X by a perforated line. The ballot papers shall be serially numbered on the face of both the foil and the counterfoil and shall be stamped by such mark or marks and in such manner, as may be directed by the Inspector of Municipal Council and Local Boards on the back of both the foil and the counterfoil.

(ii) there shall be a ballot box for each polling booth and the polling officer shall immediately before the commencement of the poll, show the box empty to such persons as may be present at such station, and shall then lock it up and place his seal upon it. He shall thereupon place the box so locked and sealed in his view for the receipt of ballot papers.

(iii) Each elector shall be given only one ballot paper whatever may be the number of seats which have to be filled. The elector on receiving the ballot paper shall forthwith proceed into the polling campartment and there make a mark (or marks) in the compartment (or compartmentse enclosing the symbol (or symbols) of the candidate (or candidates) of his choice printed on the ballot paper. The mark may be made anywhere in the space within the compartment enclosing the symbol

itself or partly on the symbol and partly outside the symbol or wholly outside the symbol. He shall then fold the ballot paper so as to conceal his vote and after showing to the polling officer the mark stamped on its back, put it into the ballot box which will be in front of the polling officer.

(iv) If any elector incapacitated by blindnes or on account of old age or other infirmity from recording his vote on the ballot paper requires the assistance of the polling officer, the polling officer shall enter the polling compartment with such elector and ascertain from the elector the candidate or candidates in whose favour he wishes to vote. He shall then mark on the ballot paper according to the directions of the elector, fold it so as to conceal the vote and then place the ballot paper in the ballot box.

(v) In the case of an elector receiving a "tendered" ballot paper, the elector shall proceed into the polling compartment and there place the ballot paper after making the necessary mark or marks thereon in the envelope given to him for the purpose by the polling officer, stick the envelop and then hand it over to the polling officer.

(vi) the Election Officer shall open the ballot box and adopt any convenient procedure that he may deem fit to count the ballot papers contained therein and to ascertain the number of valid votes secured by each candidate.

(3) The Government may issue such general or special directions as may in their opinion be necessary for the purpose of giving due effect to the conduct of elections under this rule.

[The Forms are not printed.]

APPENDIX VIII.

Rules for Conduct of Election of Chairmen and Vice-Chairmen of Municipal Councils.

[Corrected and amended upto end of 1959.]

RULES.

I. (1) The election of chairman or vice-chairman shall be held in the municipal office by the councillors at a meeting specially convened for the purpose.

(2) Such meeting shall be convened as soon as possible after the occurrence of the vancancy—

(*a*) in the case of the election of chairman—

(i) by the Revenue Divisional Officer in cases falling under sub-section (7) of section 12 of the Act; and

(ii) by the Vice-chairman in other cases; and

(*b*) in the case of the election of vice-chairman, by the chairman.

Notice of the day and hour of meeting shall be given at least seven clear days previous to the day of meeting.

(3) Such meeting shall be presided over—

(*a*) If held for the election of Chairman,

(i) in cases falling under sub-section (7) of section 12 of the Act, by the Revenue Divisional Officer, and

(ii) in other cases, by the Vice-Chairman, or if the Vice-Chairman himself intends to stand as a candidate at the election, or in his absence, by a Councillor, not intending to stand as the candidate at the election, chosen by the meeting to preside for the occasion, and

(*b*) if held for the election of Vice-Chairman by the Chairman or in his absence, by a Councillor, not intending to stand as a candidate at the election chosen by the meeting to preside for the occasion.

II. (1) A candidate for the office of the Chairmance/vice-Chairman of Municipal Council shall be proposed by one Councillor and seconded by another.

(2) the candidate so proposed and seconded shall, whether the vacancy be ordinary or casual, be present at the meeting and shall inform the chairman of the meeting whether he is willing to stand for such election :

Provided that, where in the case of a casual election the candidate who is willing to stand for the election is unable to be present at the meeting his proposer or seconder shall produce the consent in writing of the candidate duly attested by an Officer of Government not lower in rank than a Tahsildar, and hand it over to the Chairman of the meeting who shall read it out at the meeting

(3) The names of all the candidates who have been proposed and seconded and who have expressed their willingness to stand for election shall be read out by the chairman of the meeting.

III. (1) If there is only one duly nominated candidate, there shall be no ballot and he shall be declared to have been elected.

(2) If there are two or more candidates, the votes of the councillors present at the meeting shall be taken.

(3) Where the votes of the councillors have to be taken under sub-rule (2), a distinctive mark shall be assigned to each candidate by the president of the meeting in consultation with the candidates. Serial numbers shall also be assigned to candidates with reference to the alphabetical order of their names. The president of the meeting shall then announce to the councillors the distinctive mark and serial number assigned to each candidate.

IV. (1) At the place set apart for voting, the president of the meeting shall provide as many ballot boxes as there are candidates, the box of each candidate bearing prominently the name of the candidate in English and in the language or languages of the locality and the serial number and the distinctive mark assigned to him. Every ballot box shall be constructed that ballot papers can be introduced therein, but cannot be withdrawn therefrom without the box being unlocked.

(2) The president of the meeting, shall, immediately before the votes are taken, show each of the ballot boxes empty to such councillors as may be present, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such a manner as to prevent its being opened without breaking such seal. The ballot boxes shall be arranged from left to right inside the voting compartment in the serial order referred to in sub-rule (3) of rule III.

(3) Every councillor wishing to vote shall be supplied with a ballot paper, which shall be a blank sheet of paper on which the president of the meeting shall have, before the supply, affixed a stamp so as to indicate its authenticity. The voter shall then proceed to the place set part for the purpose and there place the ballot paper in the ballot box of the candidate for whom he wishes to vote. The president of the meeting shall cause such arrangements to be made as will prevent the councillors who have already voted from having access to the councillors who are yet to vote.

(4) The president of the meeting shall then open in the presence of the councillors present the ballot boxes one after another, take out the ballot papers therefrom, count them, and record the number thereof in a statement. A ballot paper shall be rejected, if it—

(*a*) bears any mark by which the voter can be identified, or

(*b*) does not bear the official stamp prescribed in sub-rule (3).

(5) The president of the meeting shall then declare the results in accordance with the following instructions :—

(i) If there are only two candidates, the one who secures the larger number of votes shall be declared to have been elected. In the event of there being an equality of votes between the two candidates, the president of the meeting shall draw lots in the presence of the councillors and the candidate whose name is first drawn shall be declared to have been duly elected.

(ii) If there are more than two candidates, the one who obtains the smallest number of votes shall be eliminated and the votes taken again. If there is an equality of votes among all the candidates, or if two or more candidates lowest on the list have obtained an equal number of votes, the president of the meeting shall ascertain by casting lots in the presence of the councillors which of such candidates shall be eliminated. The elimination shall be repeated until two candidates only are left, when votes shall be taken for the last time and the candidate, who secures the larger number of votes shall be declared to have been duly elected. In the event of there being an equality of votes at the final stage between the two remaining candidates, the present of the meeting shall draw lots in the presence of the councillors and the candidate whose name is first drawn shall be declared to have been duly elected.

No candidate shall take part in a ballot, but a candidate may withdraw at any stage and after so withdrawing, he may take part in any ballot. Similarly a candidate who has been eliminated at any stage under clause (*ii*) of sub-rule (5) of the rule IV may take part in any ballot or subsequent stages.

VI. (Omitted.)

VII. Immediately after the meeting, the president of the meeting shall—

(*a*) prepare a record of the proceedings at the meeting and sign it, attesting with his initials every correction made therein ; and also permit any member present at the meeting to affix his signature to such record, if he expresses his desire to do so ; and

(*b*) forward the name of the person elected as $\frac{\text{chairman}}{\text{vice-chairman}}$ to the Superintendent, Government Press, through the Collector of the District for publication in the *Fort St. George Gazette*.

VIII. (1) The president of the meeting shall then make up into separate packets the ballot papers relating to each candidate, whether counted or rejected, seal up each packet and note thereon a description of its contents, the election to which it relates and the date thereof.

(2) These packets shall not be opened and their contents shall not be inspected or produced except under the orders of an election or other competent Court.

(3) The packets shall be retained in safe custody in the municipal office for a year and shall then, unless otherwise directed by the orders of a competent Court, be destroyed.

APPENDIX IX

Rules for Decision of Election Disputes under the Madras District Municipalities Act, 1920

[Corrected upto end of 1959].

RULES.

1. (1) Save as otherwise provided no election held under the Act whether of a councillor, chairman or vice-chairman shall be called in question except by an election petition presented in accordance with these rules to an election commissioner as defined by sub-rule (2) by any candidate or elector against the candidate who has been declared to have been duly elected (hereinafter called the returned candidate) or if there are two or more returned candidates, against all or any of such candidates.

(2) The election commissioner shall be

(*a*) the subordinate Judge having territorial jurisdiction over the municipal area or if there is more than one such subordinate Judge, the principal subordinate Judge, or

(*b*) if there is no such subordinate Judge, the district Judge having such jurisdiction :

Provided that an election petition may, on application, be transferred—

(1) if presented to a subordinate Judge under clause (*a*), by the district Judge concerned to another subordinate Judge within jurisdiction or his own file ; and

(2) if presented to a district Judge under clause (*b*), by the High Court to another district Judge or to a subordinate Judge in another district.

Where an election petition is transferred to any subordinate or district Judge under the foregoing proviso, such Judge shall be deemed to be the election commissioner.

(3) An election commissioner exercising jurisdiction under these rules shall be deemed to exercise such jurisdiction as a *persona designata* and not in his capacity as a Judge, of the Court over which he presides.

2. (1) The petition shall be presented within seven days of the date of the declaration of the result of the election :

Provided that where the result of any election held in pursuance of sub-clause (i) of clause (*a*) of section 177 of the Madras District Municipalites (Amendment) Act, 1930, was declared before the publication of these rules in the *Fort St. George Gazette*, a petition questioning such election may be presented under these rules within seven days from the date of such publication.

Explanation.—If the Court of the Subordinate Judge or District Judge who is the election commissioner is closed on the last of the seven days referred to in this sub-rule or in the proviso thereto, the petition may be presented to the election commissioner on the next day afterwards on which such Court is open.

This explanation shall be deemed to have come into force on the 30th day of April, 1938.

(2) The petition shall contain a statement in concise form, of the material facts on which the petitioner relies and the particulars of any corrupt practice which he alleges, and shall, where necessary, be divided into paragraphs numbered consecutively. It shall be signed by the petitioner and vertified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure, 1908.

3. (1) If the irregularities alleged in the petition are likely to affect the validity of the election of more than one returned candidate the petitioner shall join as respondents to his petition all such returned candidates.

(2) The petitioner may, if he so desires, in addition to calling in question the election of the returned candidate or of all or any of the returned candidates, as the case may be, claim a declaration that he himself or any other candidate has been duly elected ; in such case he shall join as respondent to his petition all other candidates who were nominated for the election but had not withdrawn before the polling.

4. (1) At the time of presentation of the petition the petitioner shall deposit with it, as security for the cost of the same, a sum of two hundred rupees in cash.

Explanation.—Where the election of more than one returned candidate is called in question a separate deposit shall be made in respect of each such returned candidate.

(2) If the provisions of sub-rule (1) are not complied with, the election commissioner shall dismiss the petition.

(3) Upon compliance with the provisions of sub-rule (1) the election commissioner shall proceed to inquire into the petition.

5. The election commissioner shall as soon as may be cause a copy of the petition to be served on each respondent and on the chairman of the municipal council concerned and the election authority. Copies shall also be affixed to the notice board of the Court over which the election commissioner presides in his capacity as the Judge and of the municipal office. He may also call on the petitioner to execute a bond in such amount and with such sureties as he may require for the payment of any further costs. At any time within fourteen days after such publication, any other candidate shall be entitled to be joined as a respondent on furnishing similarly such security as may be demanded by the election commissioner.

6. Every election petition shall be inquired into by the election commissioner as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits; provided that it shall only be necessary for the election commissioner to make a mememorandum of the substance of the evidence of any witness examined by him.

Explanation.—The election commissioner shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters :—

(*a*) discovery and inspection,

(*b*) enforcing the attendance of witnesses, and requiring the deposit of their expenses,

(*c*) compelling the production of documents,

(*d*) examining witnesses on oath,

(*e*) reception of evidence taken on affidavit, and

(*f*) issuing commissions for examination of witnesses,

and may summon and examine *suo motu* any person whose evidence appears to him to be material.

7. (1) No election petition shall be withdrawn without the leave of the election commissioner.

(2) If there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.

(3) When an application for withdrawal is made, notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the manner specified in rule 5.

(4) No application for withdrawal shall be granted if the election commissioner is of opinion that such application has been induced by any bargain or consideration which be considers ought not to be allowed.

(5) If the application is granted—

(*a*) the petitioner shall be ordered to pay the costs of the respondent theretofore incurred or such portion thereof as the election commissioner may think fit, and

(*b*) such withdrawal shall be communicated to the chairman of the municipal council concerned and the election authority by the election commissioner.

(6) Any order made by the election commissioner regarding the costs of the inquiry, shall be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by the election commissioner in his capacity as the judge of a Court.

8. An election petition shall abate on the death of a sole petitioner or of the survivor of several petitioners, and such abatement shall be communicated to the chairman of the muncipal council concerned and the election authority by the election commissioner.

9. Where at any inquiry into an election petition any candidate other than a returned candidate claims the seat for himself, the returned candidate or candidates or any other party to the proceedings may give evidence to prove that the election of such candidate would have been void if he had been a returned candidate and a petition had been presented complaining of his election.

10. If in the opinion of the election commissioner—

(*a*) a returned candidate, his agent, or any other person with the connivance of such candidate or agent has committed, or abetted the commission of any election offence falling under section 56 of the Act or under Chapter IX-A of the Indian Penal Code, or

(*b*) the election of a returned candidate has been procured or induced or the result of the election has been materially affected, by any of the following corrupt practices :—

(i) any election offence falling under section 56 of the Act or under Chapter IX-A of the Indian Penal Code when committed by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent ;

(ii) any payment or promise of payment to any person whomsoever on account of the conveyance of any elector to or from any place for the purpose of recording his vote;

(iii) the hiring, employment, borrowing or using for the purposes of the election of any boat, vehicle or animal usually kept for letting on hire or for the conveyance of passengers by hire :

Provided that any elector may hire any boat, vehicle or animal or use any boat, vehicle or animal which is his own property to convey himself to or from the place where the vote is recorded ;

(iv) the hiring, using or letting, as a committee-room or for the purpose of any meeting to which electors are admitted, of any building, room or other place where intoxicating liquor is sold to the public ; or

(*c*) the result of the election has been materially affected by any irregularity in respect of a nomination paper or by the improper reception or refusal of a nomination paper or vote or by any non-compliance with the provisions of the Act or the rules made thereunder, the election of such returned candidate shall be void :—

Provided that if the election commissioner is of opinion that any corrupt practice specified in clause (*b*) of this rule, which does not amount to any form of bribery other than treating as hereinafter explained has been committed and if the election commissioner is further of opinion that the candidate has satisfied him that—

(*a*) no corrupt practice was committed at such election by the candidate and that any corrupt practices committed were committed contrary to the orders and without the sanction or connivance of such candidate ; and

(*b*) such candidate took all reasonable means for preventing the commission of corrupt practices at such election ; and

(*c*) the corrupt practices committed were of a trivial, un-important and limited character ; and

(*d*) in all other respects the election was free from any corrupt practice on the part of such candidate or any of his agents ;
then the election commissioner may find that the election of such candidate is not void.

Explanation.—For the purpose of this rule 'treating' means the incurring in whole or in part by any person of the expense of giving or providing any food, drink, entertainment or provision to any person with the object, directly or indirectly, of inducing him or any other person to vote or refrain from voting as a reward for having voted or refrained from voting.

11. (1) At the conclusion of the inquiry the election commissioner shall declare whether the election of the returned candidate or candidates is void under rule 10.

(2) If he declares the election of the returned candidate or candidates void, he shall further pass an order either.

(*a*) declaring that any other party to the petition who has under these rules claimed the seat has been duly elected ; or

(*b*) ordering a fresh election.

(3) The order of the eletion commissioner under sub-rules (1) and (2) shall be final.

(4) A copy of every order under sub-rule (1) or sub-rule (2) shall be communicated to the chairman of the municipal council concerned and the election authority.

12. When an election is declared void under sub-rule (1) of rule 11 and a fresh election is ordered under clause (*b*) of sub-rule (2) of rule 11 the seat of the returned candidate or, as the case may be, the seats of the returned candidates shall be deemed to be vacant from the date of the order of the election commissioner and the authority concerned shall forthwith take the necessary steps for holding such fresh election.

APPENDIX X. (ANDHRA RULES).

Andhra Rule relating to change of designation of the Inspector of Municipal Councils and Local Boards as Inspector-General of Local Administration.[1]

(*G.O. No.* 421, *Local Administration, 20th April*, 1955.)

In exercise of the powers conferred by *section* 303 *of the Madras District Municipalites Act*, 1920 (*Madras Act V of* 1920), *section* 199 *of the Madras District Boards Act*, 1920 (*Madras Act XIV of* 1920), *and section* 112 *of the Madras Village Panchayats Act*, 1950 (*Madras Act X of* 1950), the Governor of Andhra here by makes the following rule relating to the change of designation of the Inspector of Municipal Councils and Local Boards, the same having been published as required by *section* 304 *of the Madras District Municipalites Act*, 1920 (*Madras Act V of* 1920), *section* 200 *of the Madras District Boards Act*, 1920 (*Madras Act XIV of* 1920), *and section* 113 (2) *of the Madras Village Panchayats Act*, 1950 (*Madras Act X of* 1950).

The rule hereby made shall come into force on and from the 21st April, 1955.

RULE.

Any reference to the Inspector of Municipal Councils and Local Boards occurring in any notification, order, scheme, rule, form or by-law made under *the Madras District Municipalities Act*, 1920 (*Madras Act V of* 1920), *the Madras District Boards Act*, 1920 (*Madras Act XIV of* 1920), *and the Madras Village Panchayats Act*, 1950 (*Madras Act X of* 1950), and in force shall mean a reference to the Inspector-General of Local Administration.

APPENDIX XI.

Andhra Amendments to Rules for the Conduct of Elections of Municipal Councillors.[2]

(*G.O. Ms. No.* 846, *Local Administration*, 10*th September*, 1954).

In exercise of the powers conferred by section 303 (2) (*a*) and (*b*) of the Madras District Municipalities Act, 1920 (Madras Act V of 1920), the Governor of Andhra hereby makes the following

---

1 Published in the Rules Supplement to Part I, page 149, of the *Andhra Gazette*, dated 21st April, 1955.

2 Published in the Rules Supplement to Part I, page 195, of the *Andhra Gazette*, dated 30th September, 1954.

amendments to the rules for the conduct of elections of Municipal Councillors published with late Local Self-Geovernment Department (Government of Madras) Notification No. 1267, dated the 21st July, 1931 at pages 594-601 of Part I-A of the *Fort St. George Gazette*, dated 21st July, 1931, as subsequently amended.

AMENDMENTS.

In the said rules—

1. In rule 25—

(i) In sub-rule (1)—

(*a*) The words "and no ballot paper shall be issued thereafter" occurring at the end, shall be omitted and,

(*b*) the following proviso shall be added to the sub-rule, namely :—

"Provided that all electors present within the polling station before it is so closed, shall be entitled to have their votes recorded".

(ii) sub-rules (2) and (3) shall be renumbered as sub-rules (3) and (4) respectively, and after sub-rule (1), the following shall be inserted as sub-rule (2), namely :—

"(2) If any question as to whether any elector is present within the polling station before it is closed, the question shall be referred to the polling officer whose decision shall be final" and (2) in sub-rule (1) of rule 27-A after clause (*c*) the following clause shall be inserted, namely:—

"(*d*) is found in the ballot box of a booth to which the voter was not allotted."

APPENDIX XII.

Andhra Amendments to the Rules for the Conduct of Elections of Municipal Councillors'

(*G.O. Ms. No.* 396, *Health and Local Administration*, 14*th March*, 1956.)

In exercise of the powers conferred by section 303 (2) (*a*) and (*b*) of the Madras District Municipalities Act, 1920 (Madras Act V of 1920), the Governor of Andhra hereby makes the following amendments to the rules for the Conduct of Elections of Municipal Councillors published with the notification of the Government of Madras in the late Local Self-Government Department No. 1267, dated 21st July, 1931, at pages 594-601 of Part I-A of the *Fort St. George Gazette*, dated 21st July, 1931, as subsequently amended, the same having been previously published as required by section 304 (*a*) of the said Act.

AMENDMENTS.

In the said rules—

(i) in rule 1, clauses (*a*) and (*b*) shall be relettered as clauses (*b*) and (*c*) respectively and before the clauses as so relettered the following shall be inserted as clause (*a*), namely :—

(*a*) the Act, means the Madras District Municipalities Act, 1920 ;

(ii) in sub-rule (1) of rule 2—

(*a*) in clause (*c*) for the words 'for any community or communities' the words 'for the members of the Scheduled castes or Anglo-Indians', shall be substituted, and

(*b*) in clause (*f*) for the words 'not being less than ten hours between 7 A.M. and 6 P.M. the words 'not being less than nine hours between 7 A.M. and 5 P.M., shall be substituted ;

(iii) in sub-rule (3) of rule 3 the following shall be added at the end, namely :—

"An elector standing as a candidate for election to a seat shall not sign his own nomination paper either as proposer or seconder; but where more than one candidate has to be elected, he may sign either as proposer or seconder, as many nomination papers of other candidates as there are vacancies to be filled and no more" ;

(iv) in rule 5—

(*a*) in sub-rule (3) before the word 'votes' in both the places where it occurs the word 'valid' shall be inserted.

(*b*) in sub-rule (4) before the words 'votes polled' the word 'valid' shall be inserted ; and

(*c*) in sub-rule (6) the following shall be added at the end, namely :—

"Whether nominations were received from the candidates for the wards or not";

(v) in rule 8, after sub-rule (3) the following sub-rules shall be added, namely :

(4) In every case where a symbol has been assigned to a candidate under sub-rule (3) such candidate or his election agent shall forthwith be informed of the symbol so assigned and be supplied with a specimen thereof by the Election Officer.

(5) Every candidate may by a letter addressed to the Election Officer, intimate the appointment of his election agent with the latter's acceptance recorded thereon ;

(vi) in sub-rule (2) of rule 9—

(*a*) for the words "but at least three clear days before the date appointed for the poll" the words "but not later than 5 P.M. on the eight day from the last day of withdrawn specified in sub-rule (1)" shall be substituted ; and

(*b*) the last sentence ' A withdrawal under this sub-rule may be made not later than 5 O'clock in the afternoon of the last day for such withdrawal' shall be omitted ;

(vii) for rule 10, the following rule shall be substituted, namely :—

' 10. (1) After the list of valid nominations is published under rule 8, the Election Officer shall adopt the procedure specified below and determine the seats in respect of which a poll is necessary and the candidates from among whom the said seats have to be filled by the electors.

(2) (*a*) The Election Officer shall consider the position separately in respect of each of the three classes of reserved seats, namely, seats reserved for members of the scheduled Castes, Anglo-Indians and women, as have to be filled at the election and in that order.

(*b*) (i) if in respect of any class of reserved seats, the number of candidates qualified for election is not larger than the number of vacancies, the Election Officer shall declare all such candidates to have been duly elected.

(ii) If the number of candidates qualified for election to any class of reserved seats exceed the number of vacancies in that class, but the total number of candidates standing for election in the ward is equal to the total number of vacancies to be filled at the election, the Election officer shall, after notice to the candidates concerned, decide by drawing lots which of the candidates so qualified shall be declared elected :

Provided where the candidates qualified for election to the reserved seats have agreed among themselves as to which of them should be declared elected to the reserved seat and present a report of such agreement signed by all of them to the Election Officer before the expiry of the time allowed for withdrawal of candidates under sub-rule (1) of rule 9, the Election Officer shall make a declaration accordingly.

(3) If all the vacancies in the reserved seats to be filled at the election have been filled under sub-rule (2) and if the number of candidates remaining after the exclusion of the candidates so declared elected under the said sub-rule is not larger than the number of non-reserved seats to be filled at the election, the Election officer shall declare them to be duly elected to non-reserved seats.

(4) In respect of vacancies filled under sub-rules (2) and (3) a poll shall be held for elections from among the candidates remaining after excluding those declared elected under the said sub-rules.

(5) If there are any seats remaining to be filled after following the procedure prescribed in sub-rules (2), (3) and (4) the Election Officer shall start proceedings afresh for filling them, in all respects as if for a new election :

(viii) in rule 121 :—

(*a*) in sub-rule (1) the following shall be inserted as the opening sentence, namely :—

" A polling station shall have one or more polling booths " and

(*b*) sub-rule (3) shall be renumbered as sub-rule (4) and before the sub-rule as so renumbered the following shall be inserted as sub-rule (3), namely :—

(6) where there are more than one polling booth in a polling station the Election Officer may appoint a presiding officer who may exercise the powers of polling officer in any polling booth in his station and control and supervise all the polling officers and other staff in the station.

(ix) in rule 12-A and 13-A (1) the expressions " except in so far as it may be necessary to ensure that the ballot papers are duly placed in boxes " and " except in so far as it may be necessary to ensure that the ballot papers are duly placed in it respectively shall be omitted ;

(x) after rule 12-B the following shall be added as rule 12-C, namely :—

" 12-C. (1) No person shall on the date or dates on which a poll is taken at any polling station commit any of the following acts within the polling station or in any public or private place within a distance of one hundred yards of the polling station.

(*a*) canvass for votes ;

(*b*) solicit the vote of any elector ;

(*c*) persuade any elector not to vote at the election or for any particular candidate ;

(*d*) exhibit any notice or sign (other than an official notice) relating to the election ;

(2) Any person who contravenes the provisions of sub-rule (1) shall be punishable with fine which may extend to one hundred rupees ".

(xi) in rule 13—

(*a*) in sub-rule (1) for the last sentence, the following sentence shall be substituted, namely—

" He shall place at the entrance to the polling compartment a board on which displayed in bold and clear print, the name of each candidate, the serial number and the symbol assigned to him and the number of vacancies for which the election is held " in after sub-rule (2) the following shall be added as sub-rule (3), namely :—

" (3) The symbol assigned to each candidate under sub-rule (1) shall be printed on labels which shall be pasted both inside and outside a ballot box and such ballot box shall then be deemed to have been allotted to that candidate ",

(xii) the following shall be inserted as rule 14, namely :—

" 14. (1) Every elector who applies for a ballot paper for the purpose of voting at a polling station shall before receiving paper allow :—

(*a*) the inspection of his left palm and forefinger by the polling officer, and

(*b*) an indelible ink mark to be put in the palm at the base of his left forefinger,

(2) if any such elector—

(*a*) refuses to allow such inspection of his palm and left forefinger ; or

(*b*) refuses to allow an indelible ink mark to be put in the palm at the base of his left forefinger; or

(*c*) does any act in order to remove any such mark after it has been put, he shall not be entitled to be supplied with any ballot paper or to record his vote at the election.

(3) No person who has already such a mark in the palm at the base of his left forefinger at the time he enters the polling station, shall be supplied with ballot paper.

(4) Any reference in this rule to the left forefinger of an elector shall in the case where the elector has no left forefinger be constructed as a reference to any other finger of his left hand and shall in the case where there are no fingers on his left hand constructed as a reference to the forefinger or any other finger of his right hand and shall in the case where he has no fingers in both the hands, be constructed as a reference to such extremity of his right or left arm as he possesses.".

(xiii) in rule 15, the following shall be inserted after the third sentence, namely :—

" where more than one ballot paper are attached to the same counterfoil the mark shall be stamped on all the ballot papers as well as the counterfoils.

(xiv) In sub-rule (4) of rule 16, after the first sentence the following sentences shall be inserted, namely:

" The polling officer shall thereafter cause the palm at the base of the left forefinger of the elector to be marked with indelible ink ".

(xv) for rule 18, the following rule shall be substituted, namely :

" 18. If owing to blindness or other infirmity an elector is unable to read the symbol on a ballot box or is physically incapable of putting the ballot paper into a ballot box, the polling officer shall enter the polling compartment with such elector ascertain from the elector the name of the candidate in whose favour he desires to vote and shall put the ballot paper in the ballot box of such candidate in accordance with the wishes of such elector. The Polling Officer shall do this with utmost secrecy as is feasible and shall make a note of each such instances in a sheet of paper without indicating the manner in which the votes have been cast and send it to the Election Officer in a sealed cover along with the packets mentioned in sub-rule (3) of rule 25 ".

(xvi) in sub-rule (6) of rule 23 the expression 'after obtaining the previous sanction required by section 196 of the Code of Criminal Procedure, 1898, such sanction being obtained from the District Magistrate concerned ' occurring in the first sentence shall be omitted.

(xvii) in rule 25, after sub-rule (4) the following shall be added as sub-rule (5), namely:—

" (5) The Election Officer, shall make adequate arrangements for the safe transport of all the ballot boxes packets and other papers referred to in this rule and for their safe custody until the commencement of the counting votes."

(xviii) in sub-rule (1) of rule 28, for the provisos the following provisos shall be substituted, namely :—

Provided that if one or more seats are reserved for members of the Scheduled Castes or Anglo-Indian or women, the Election Officer shall first declare the candidate or candidates who are members of the Scheduled castes who are Anglo Indians or women, as the case may be, to whom the largest number of votes has been given, to be elected to such reserved seat or seats ;

Provided further that if seats are served for members of the Scheduled castes, Anglo-Indians or women, the Election Officer shall first declare the candidate, or candidates, who are members of the Scheduled Castes, or who are Anglo Indians as the case may be, to whom the largest number of votes have been given, to be elected to the seat of seats reserved for members of the Scheduled Castes or Anglo Indians and then declare the candidate or candidates who are women to whom the largest number of votes have been given to be elected to the sest or seats reserved for women ".

ANDHRA PRADESH RULES.

Rules relating to Conduct of Elections of President and Vice-President of Municipalities.[1]

(*G.O. Ms. No.* 59, *Health, Housing and Municipal Administration,* (*Municipal Administration*) 30*th November,* 1959.)

In exercise of the powers conferred by section 309 of the Hyderabad District Municipalities Act, 1956 (Hyderabad Act XVIII of 1956), the Governor of Andhra Pradesh hereby makes the following rules, the same having been previously published at pages 759-761 of the Rules Supplement to Part I of the *Andhra Pradesh Gazette,* dated 29th October, 1959, as required by sub-section (3) of section 308 of the said Act.

---

1 Published in Rules Supplement to Part II, page 783 of the *Andhra Pradesh Gazette,* dated 10th December, 1959.

RULES.

1. The election of the President or Vice-President of a Municipality under section 35 or 38 of Hyderabad District Municipalities Act, 1956, shall be held in the office of the Committee.

2. (1) No business shall be transacted at a meeting referred to in rule 1 unless there be present at least one-third of the total number of member of the Committee.

(2) If within half an hour after the time appointed for the said meeting, a quorum is not present, the meeting shall be adjourned by the presiding authority unless all the members of the Committee present agree to wait longer.

3. (1) A candidate for the office of the President or Vice President shall be proposed by one member of the Committee and seconded by another. The names of all the candidates proposed and seconded shall be read out by the President of the meeting.

(2) If there is only one duly nominated candidate there shall be no ballot and he shall be declared to have been elected.

(3) If there are two or more such candidates, an election shall be held by secret ballot and the votes of he members of the Committee present at the meeting shall be taken.

(4) Where the votes of the members of the Committee have to be taken under sub-rule (3) a distinctive mark shall be assigned to each candidate by the President of the meeting in consultation with the candidates. Serial numbers shall also be assigned to candidates with reference to the alphabetical order of their names. The President of the meeting shall then announce to the members of the Committee present the distinctive mark and serial number assigned to each candidate.

4. (1) At the place set apart for voting, the President of the meeting shall provide as many ballot boxes as there are candidates, the box of each candidate bearing prominently the name of the candidate in English and in the language or languages of the locality and the serial number and the distinctive mark assigned to the candidate. Every ballot box shall be so constructed that ballot papers can be introduced therein but cannot be withdrawn therefrom without the box being unlocked.

(2) The President of the meeting shall immediately before the votes are taken show each of the ballot boxes empty to such members of the Committee as may be present, so that they may see that it is empty, and shall then lock it up and place his seal and also allow such members as are desirous, to affix their seals upon it in such a manner as to prevent its being opened without breaking such seals. The ballot boxes shall be arranged from left to right inside the voting compartment in the serial order referred to in sub-rule (2) of rule 3.

(3) Every member of the Committee wishing to vote shall be supplied with a ballot paper, which shall be a blank sheet of paper on which the President of the meeting shall have, before the supply thereof to the member of the Committee affixed a stamp so as to indicate its authenticity. The voter shall then proceed to the place set apart for the purpose and there place the ballot paper in the ballot box of the candidate for whom he wishes to vote. The President of the meeting shall cause such arrangements to be made as will ensure the secrecy of the ballot and prevent the members of the Committee who have already voted from having access to the members of the Committee who are yet to vote.

5. (1) The President of the meeting shall then open in the presence of the members of the Committee present, the ballot boxes one after another, take out the ballot papers therefrom count them, and record the numbers thereof in a statement.

(2) A ballot paper shall be rejected if it—

(*a*) bears any mark by which the voter can be identified ; or

(*b*) does not bear the official stamp prescribed in sub-rule (3) of rule 4.

6. The President of the meeting shall then proceed in accordance with the following instructions :—

(i) If there are only two candidates, he shall record the number of votes secured by each. In the event of there being any equality of votes between the two candidates, the President of the meeting shall draw lots in the presence of the members of the Committee present, to decide which candidate shall be declared to have been duly elected.

(ii) If there are more than two candidates, the one who obtains the smallest number of votes shall be eliminated and the votes taken again. If there is equality of votes among all the candidates or if two or more candidates lowest on the list have obtained an equal number of votes, the President of the meeting shall ascertain by casting lots in the presence of the members of the Committee to decide which of such candidate shall be eliminated. The process of elimination shall be repeated until two candidates only are left when votes shall be taken for the last time. In the event of there being an equality of votes at the final stage between the two remaining candidates, the President of the meeting shall draw lots in the presence of the members of the Committee to ascertain which of them shall be declared to have been duly elected.

7. No candidate shall take part in a ballot, but a candidate may withdraw at any stage, and after so withdrawing may take part in any ballot. Similarly, a candidate who has been eliminated at any stage under clause (*ii*) of rule 6 may take part in any ballot at subsequent stages.

8. (1) Immediately after the meeting, the President of the meeting shall prepare a record of the proceedings at the meeting and sign it, attesting with his initials every correctiod made therein and

declare the name of the candidate who secures larger number of votes in case there are only two candidates, or the candidate who secures the largest number of votes in the final stage in case there are more than two candidates and in case of equality of votes between the two such candidates, the candidate whose name has been drawn by lots under rule 6 and publish the names of candidates elected by affixing the names on the notice-board of the Municipality and at not less than three conspicuous places in the Municipality in addition to publication in the *Andhra Pradesh Gazette*.

(2) The President of the meeting shall report the names of the candidates finally elected as President or Vice-President as the case may be to—

(i) the Government ; (ii) the Inspector-General of Local Administration, Andhra Pradesh, or to such other officer as he may specify ; and (iii) to the Director of Printing, Andhra Pradesh, Hyderabad, for publication in the *Andhra Pradesh Gazette*.

9. (1) The President of the meeting shall make up into separate packets the ballot papers relating to each candidates, whether counted or rejected, seal up each packet and note thereon the description of its contents ; the election to which it relates and the date thereof.

(2) These packets shall not be opened and their contents shall not be inspected or produced except under the orders of an Election Tribunal or other competent court.

(3) The packets shall be retained in safe custody in the office of the Committee for a year and shall then, unless otherwise directed by the orders of a competent Tribunal or Court, be destroyed.

(4) If at the same meeting both the election of President and Vice-President has to be held the election of Vice-President shall be commenced after completing the election of President.

INDEX.

MADRAS DISTRICT MUNICIPALITIES ACT (V OF 1920).

Commencement, 238.
Construction, 14.
Old and New Acts, 14, 238.
Taxing statute (in relation to assessments to Tax), 97.
Administration report, 39.
Annual submission to Govt., 39.

APPEALS

Appeals and appellate authorities, 21o.
Appeals against assessment, rules governing, 251.

ASSESSMENT BOOKS—, 245.

Amendment of, 247-248.
Notice of revision (general), 247.
Special notice of enhancement between revisions, 247.
Quinquennial revision, 245.
Valuation officers, 245, 246.

BUILDING—, 15.

Building line, 16, 132.
Cow-shed, 15.
Defined, 15.
Licence before construction, etc., **133.**
Numbering of, **145.**
Number not to be destroyed, etc.,, 146.
Owner to maintain and replace, 146.
Owner to give notice of, 15.
Construction, demolition or reconstruction, 95.
Reconstruction, 15, 20.
Regulations relating to, 146, 148.

BUILDING REGULATIONS—, 146, 158.

Alterations and additions, 155.
Application to construct, etc., 149, 154.
Building site and construction, 147.
Buildings in corners of streets, 148.
Exemptions, **158.**
External walls, 155.
Grounds for refusal, 154.
Lapse of permission to construct, 153.
Necessity for approval of site, 151.
Period for approval or disapproval, 151, 154.
Period for grant or refusal to construct, 151.
Power of council to regulate, future constructions in certain streets, 147.
Power of executive authority to require alterations or to demolish, 153, 155.
Power of Govt., to make rules, 146.
Prohibition against commencement without permission, 151, 154.
Prohibition against use of inflammable materials, 148.
Prohibition against doors, windows, opening outwards, 148.

BUILDING REGULATIONS—(*Contd.*)

Provision applicable to wells, 154.
Reference to council against delays and grant or refusal of permission, 152, 154.
Stoppage of work endangering life, 154.

BUTCHERS' TRADE (FISHMONGERS' AND POULTERERS' ALSO).

Licence necessary, 183.
Exemption, public market, 183.
Period of licence, 183.

BYE-LAWS.

Power of council to make, 200, 205.
Publication of bye-laws, 205.
When *ultra vires*, 14.
Carriage, 16.
Cart, 16.

CHAIRMAN

Delegation of functions, 32.
Ex-officio member of every Committee, 31.
Functions of, 30.
Meaning, 38.
Power to resign, 39.
Rights of, 31.

COMMISSIONER

Appointment of, 29.
List of Municipalities for which Commissioner shall be appointed, 273.
Rights and duties of, 34.
Whole time officer, 29.
Compensation for damage to municipal property, 226.
Determination by Court convicting, 226.
Recovery by warrant, 226.

CONTRACTS

Enforceability, 66, 68.
Mode of executing, 66.
Rules regarding conditions, 66.
Who can make, 65.
Controlling authorities and their powers, 40.
Collector and his emergency powers, 41.
State Governments' powers, 40-43.
Power to dissolve or supersede, 45.
Power to remove Chairman, or Vice-Chairman, 43.

Council, 25.
Appointment of committees, 35.
Appointment joint committees, 37.
Compulsory registration of vital statistics, 192.
Contractual powers of appointees, 65.
Delegation of authority to contract, 65.
Power to call for records, 35.

CONTRACTS—(*Contd.*)
Proceedings, rules and regulations for, 36.
Rules relating to proceedings of (Sch. III), 242, 243.

COUNCILLORS
Disqualification of, 57.
Duties and powers of, 35.

DANGEROUS DISEASES—, 192.
Defined, 192.
Disinfection and destruction, 193.
Obligation of certain persons to report, 192.
Powers of Executive Authority—
to close place of entertainments, 195
to enter suspected places, 192.
Prohibitions—
Diseased person not to enter public conveyance (Liability to additional fine), 194.
Infected person not to carry on vocation, 194.
Minor suffering from not to attend school, 195.
Water likely to spread infection not to be used, 193.
Definitions, 15, etc., sequi.

DISPUTES BETWEEN LOCAL BODIES
Adjudication of, 241.
Bar of suits in civil Courts, 241.
Modification by State Government, 241.
Powers of State Government where one of them is a cantonment, 241.

DRAINAGE (PRIVATE)
Adverse possession, 119, 120.
Connection with public drains, 120.
Control over (closing and limiting included), 119, 120.
Directions to owner to maintain troughs and pipes for catching water for roof, 122.
Draining premises in combination, 121.
Owner to provide drain-coverings and culverts, 122.

DRAINAGE (PUBLIC)
Building over or interference with public drains, 122.
Construction of culverts or drain coverings by owner, 122.
Provision and maintenanee of, 119.
Sullage from private buildings, clearance by connecting to, 119.
Payment for, basis, 19.

'ELECTIONS'—, 48.
Disqualification of candidates, 55, 61.
Disqualification of voters, 54, 61.
Filling up of seats by, 26.
Meaning of, 26.
Matters relating to jurisdiction of civil Courts, 47, 49.
Notification of elections, 38.
Of Chairman and Vice-Chairman, 28, 29.
Of Councillors, 48.

ELECTION AUTHORITY—, 17.
Power to defend himself, 232.
to revise the Roll, 54.
to summon, 217.

ELECTION OFFENCES—, 61.
Conviction for, resulting disqualification, 61.

ELECTORAL ROLL—, 52, 54.
Amendments of, 54.
Disqualification of voters, 54.
Inclusion in, qualification for, 52.
Revision of, 54.

ENACTMENTS REPEALED (SCH. I), 242.

ENCROACHMENT ON STREETS— 137, 145.
Duty to remove, 129.
Doors and windows opening outwards, 140.
'Encroachment' meaning of, 141.
License for work likely to cause obstruction, 145.
Power to allow, 129, 143.
Power to impose conditions, 139.
Precautions during repair of, 144.
Prohibition against removal of bars and lights, 144.
Prohibition of projection over and encroachments or obstructions in streets, 137, 140, 145.
Removal of, 141.

ESTABLISHMENT—, 69.
Sanction for proposals, 69.
Special resolutions for certain parts, 70.
State Governments powers of Control, 69, 70.
State Governments power to transfer officers, 71.
Who can appoint, 71.

EXECUTIVE AUTHORITY—
Defined, 17.
Duty to inspect places licensed (etc.), 215.
Functions of, 30.
Inspection and stamping of weights and measures, 221.
Obligations to carry out resolutions of council, 35.
Power to grant leave to establishment, 73.
Powers in respect of works outside municipality, 125.
Power to enter, survey and execute work places and adjacent lands, 220.
Power to prohibit sale of animals or articles in public street, 184.
Imprisonment in default of payment of fine, 225.

FACTORY, WORKSHOPS AND WORK PLACES—APPLICATION FOR CONSTRUCTION, 173.
Contents of application, 174.
Direction for abatement of nuisance, 176.
Granting permission, requisites, 175.

FILTH
- defined, 17.
- Prohibition against keeping on premises, 127.
- Prohibition against allowing outflow of, 128.
- Prohibition of throwing rubbish or filth into drains, 128.
- Removal to be only in covered carts, 128.

FIXTURE—MEANING OF—, 16.

HUT, 17, 18.
- Provisions applicable to, 154.

INDEMNITY TO STATE GOVERNMENT, MUNICIPAL AUTHORITIES, ETC., 232.

JURISDICTION OF CIVIL COURTS—, 14, 39.
- Assessment, charge or demand if can be questioned, 234.
- Disputes between Local bodies, 241.
- Election Matter, 47.
- Injunctions not to be granted (in election matters), 232.
- Suit for refund of assessment realised, 234.

'LANE', 20.

LICENSE AND FEES (REGULATION ALSO) EXEMPTIONS (GENERAL), 168.
- i For keeping animals for profit, 168.
  - Grounds for closing the place used therefor, 169.
- ii. Provisions for licensing places for industries and factories, 169-176.
- iii. Slaughter houses, 176-178.
- iv. Milk trade, 178.
- v. Markets private, 179-184.
- vi. Butchers' trade (also fishamoners and hauckers), 178.
- vii. Private cart stand, 186.
- viii. Burial or cremation grounds, 189-191.
- ix. Grave diggers licence, 191.
- List of Hill stations, Sch. II, 242.

MARKETS
- i. Private.
  - Lepers to be expelled, 183.
  - License necessary, 179.
  - License fees, 181.
  - Powers of control, 182, 183.
- ii. Public, 178, 179.
  - Control by executive authority, 179.
- iii. Place if market to be decided, reference to and the decision of Govt., 184.

MILK TRADE, REGULATION OF—, 178.
- Conditions for grant of licence, 178.

MUNICIPALITIES—
- Abolition of, 24.
- Authorities, constitution of, 25.
- Creation of, 22.
- Council, Muncipal, 25.
- Exclusion of areas from, 22.
- Inclusion of area in, 22, 23.
- Supersession, effect of, 24, 46.

MUNICIPAL PROPERTY—, 61-65.
- Transferred charitable endowments, 63.
- Trust property, 63.
- Withdrawal of Public streets from control, 62.

NUISANCE—ABATEMENT OF
- Building (unfit for human habitation): —procedure to prohibit for further use and demolish, 166.
- Works to be executed by owner to make it fit, 166.
- Building and lands (untenanted and over grown):—
- Owner to secure, enclose, clear or cleanse, —,164.
- Removal of filth and noxious vegetation, 164.
- Cultivation of certain crops, use of manure and irrigation:
- Order for prohibition or Regulation, 162.
- Prior sanction of State Government required, 162.
- Liability to pay compensation in certain cases, 162.
- Dangerous quarrying:—
- Directions to owner, to stop or abate nuisance, 160.
- Dangerous structures and trees—
  - Directions to owner—, 158, 159.
  - Owner to comply, 158, 159.
  - Power of the authorities to do the work and recover cost, 158, 159.
- Dwelling house—(Overcrowded):
- Application by executive authority to Magistrate for order to abate—, 160-167.
- Factory, etc.
- Noise and vibration; abatement of, 176.
- Nuisance caused by fuel, 176.
- Power of authority to enter, 176.
- Insanitary buildings:—
- Notice to cleanse and white wash, 165.
- Owner directed to execute works to pull down to prevent danger of decease to occupier and neighbours, 165.
- Ponds, wells, etc., (breeding place of musquitoes) -
- Directions to owners to remove or abate nuisance—, 161.
- Procedure in case of dispute, 161.
- Tanks and wells (unfit for drinking purposes).
- Order to owner to enclose, close or fill up, 162.
- Order to refrain from using or permitting user, 162.

OCCUPIER AND OWNER:
Obstruction of Owner by occupier, 220.
Occupier paying sum leviable from owner, recovery of, 220.
Occupier executing work in default of owner (recovery of expenses), 220.

PENALTIES
General provisions, 206-209 and 222.
For acting as councillor, etc., by disqualified person, 209.
For acquisition of interests in contract by officer, 210.
For not giving or false information when required under Act, 213.
For Omission to take out license for vehicle or animal, 210.
For unlawful building, 210.
For withdrawal of scavengers without notice, 212.
For wrongful restraints of executive authority or its delegate, 212.
Ordinary penalties (Sch. VII), 265-271.
Continuing breaches, 271-273.

PILGRIM TAX—LEVY ON, 110.
Rates of tax, 109.
Season tickets—Levy on, 110.

POLICE OFFICERS
Duty: to assist executive authority, 236.
to communicate any design to commit offences under Act, 236.
Failure to do so, offence under S. 10 or 44 of Dt. Police Act, 1859, 236.
Municipal servant empowered by State Government, a police officer, 237.
Power to arrest offenders against act and keep under custody, 236.

PRIVATE LATRINES
Employer to provide for labourers, 123.
Owner to provide, 123.
Provision of, for markets, etc., 123.
Screening and cleaning, 124.
Tax liability for, 123.

PROCEDURE
General provisions (re-licences and permissions)—, 213-216.
Documents, facsimile of signature, sufficency, 218.
Document, service of, 219.
Notices to be in writing, 218.

PUBLICATION:
Bye-laws, notices, orders, 219.
Notifications, 218.
Surplus sale proceeds, 224.
Trial of Offences under Act, 15.
When not provided for, 14.

PROFESSION TAX—, 97-102.
Assessment of, different classes, 248.
'Business for profits', 248.
Business in and outside municipality, 249.

PROFESSION TAX—(*Contd.*)
Council may exempt a class, 248.
'Income', meaning, 244.
Liability of members of firm, etc., 101.
Liability of servants and agents, 101.
Mode assessing taxable income, 249-250.
'Pension' commuted, 100.
Requisition to furnish list of persons liable: on employers, 102.
on owner or occupier, 102.

PROPERTY TAX—, 81.
Annual value, 85.
Different classes of, 81, 82.
Exemptions (general), 88-91.
First charge, 91.
Method of assessment of building, 85-86.
Mode of levy, 82-83.
On direction by Government, 84.
Remission of tax, 95.
Tax on agricultural land, 85.
Taxation to be uniform, 91.
Vacancy remission, 93.
Valuation of land or building to be, by executive authority, R.D.O., etc., 245.
When payable, 93.

PROSECUTION
By whom, 225.
Limitation, 225.
Public Latrines, 122.

"PUBLIC SERVANT"
Municipal officer, servant, contractor or agent for collection of municipal dues, 237.

PUBLIC WELLS, TANKS, ETC.
Duty to maintain in clean condition, 163.
Duty to fill up ordain when necessary, 163.
Open to all castes and creeds, 163.
Residence: Reside, 21.

RULES
Finance Rules, 254-261.
Have force of law, 14.
Rules regarding appeals from assessment, 251.
Rules relating to collection of tax, etc., 252-254.

SLAUGHTER HOUSES.
License for, 177.
Provision by municipality, 176.
Rent collection or farming out, 177.
Slaughter on festivals or religious ceremonies, 178.

SMALL-POX, 195.
Compulsory vaccination, 195.
Duty to give information of, 195.
Inoculation prohibited, 196.

STATE GOVERNMENT
Constitution of a municipal service for the State, 75.

STATE GOVERNMENT—(*Contd.*)

Powers of control over establishment, 69, 70.
Power to give directions to municipal councils, 176.
Power to appoint Health Officers and municipal Engineers, 73.
Power to transfer officers, 71.
Provision *re*. Government servants, lent to council, 74.
Rule making powers, 146, 196-199.
Streets, private, 18.
Making of new private street, 135.
Owner (disposing of land as building site) to make a street, 135.
Power of executive authority:—To alter or demolish street made without sanction, 136.
to order work to be carried, out, etc., 137.
Right of owners to require it to be declared public, 137.

STREETS, (PUBLIC)

"Accessible to public", 19.
Acquisition for improvement of, 131.
Defined, 19.
Encroachments on, 129.
Lighting of, 119.
Maintenance and repairs, 128.
Naming of, 145.
Powers of Municipal authority general, 130.
to dispose of closed streets, 130.
to prescribe building line, etc., 132.
to recover expenses caused by extraordinary traffic, 134.
'Projected' streets, 133.
Rights of municipality in, 20, 62, 130.
Setting back buildings, etc., 132.
Setting forward buildings, etc., 133.
Temporary closing of, 134.
Vesting of, 62.
Withdrawal from control, 63.
Watering of, 133.
Suit against Municipal authorities, etc., 227.
Limitation for, 228, 230.
Notice, necessary, 227.
Suit or prosecution against chairman, councillor and executed authority for loss etc., or for offence, 233.
Prior sanction of Govt. necessary, 233.

SUMMONS

Power of Executive authority, 217.
Power of persons conducting elections and enquiries, 217.

TAXATION AND FINANCE, 75.

Application of rules and tables (Sch. VII), 112.
Appointment of auditors, 112.
Budget estimate, 111.
Contribution to expenditure by other local authorities, 112.
Definition to Municipal fund, 111.

TAXATION AND FINANCE—(*Contd.*)

Power to exempt from taxes, 111.
Revised or Supplemental budget, 112.
Recovery of loans and advances by State Govt., 112.
Writing off irrecoverable taxes, 111.

TAXATION RULES (SCH. IV), 244.

R. 41, 'Inadequated assessed' meaning of, 244.
'Income' in (Sch. IV), meaning of, 244.

TAXES

Taxes leviable, enumerated, 75-77.
Duty on transfers, 79.
Limitation for recovery of, 224.
Notification of new taxes, 80.
Recovery of, 224, 252, 254.
Sanction of Government, 77, 79.
Saving for provisions of constitution, 80, 81.
Special taxation, 9.
Recovery of, 224, 252, 254.
Tax on carriages and animals, 103-107.
Composition of, 104.
Exemptions, 104.
'Forms' and 'Return' duly filled up, 105.
Grant of license on payment of tax, 105.
"Kept within the Municipality", 104, 105.
Liability according to period, 103.
Maximum rate of tax, 250.
Municipal number to be affixed to carrige, 105.
Pre-payment of tax condition precedent to registration under Mad. Act V of 1911, 107.
Replacement of carriages ornaments, 256.
Seizure—Where number is not affixed, 107.

TAX ON CARTS, 106.

Maximum rate, 250.
Pre-payment condition precedents to registration under Madras Act V of 1911, 107.
Provisions relating to, 106.
Seizure of carts without municipal, number affixed, 107.

Tax where, remitted, 106- 107.
Tax on servants (in Hill stations), 108.
Power of Executive authority to call for list of servants, 108.

TOWNSHIPS, 23.

TRANSFERS

Duty on, 79.
Obligation to give, notice, 94.

WASH HOUSES

Prohibition of washing at unauthorised places, 163.
Provisions of, 163.
Rents, farming out, 163.
Restrictions, applicability of, 163.

WATER-SUPPLY

Building over water mains, prohibited, 113.
Construction and maintenance of water works, 113.
Control over house-connexions, 114.
Council to provide water for domestic use, 114.
Payment for water supplied, 116.
Power to cut off, 117, 118.
Powers of executive authority over, 115, 116.
Premises connected with, trespassers, 113.
Reduction or stoppage, 118.
Supply beyond municipal limits, 117.
Vesting of works in council, 113.

WEIGHTS AND MEASURES

Inspection and test of, 221.

WELL, TANKS, ETC.

New construction only with permission, 161.
Notice to fill up or demolish, 161.
Permission to retain, 161.
Prosecution for non-compliance, 161.

WORDS AND PHRASES

'Accessible to public', 19.
'Encroachment', 141.
'Inadequately assessed' (R. 4 in Sch. IV), 244.
'Income' (Sch. IV.), 244.
'Transacting business for profit', 248.

22 AUG 1963 MADRAS